CONTINUATION

OF THE

DECISIONS of the COURT of King's Bench.

UPON

SETTLEMENT-CASES,

By Four additional Years, ending in July 1772:

To which is added

A Complete ABRIDGMENT of each Case;

AND

Two Tables of the NAMES of the Cases,
One Chronological, the other Alphabetical;
together with a Table of the Principal Matters.

Published for the Use of JUSTICES OF THE PEACE,
and BARRISTERS, and Others attending the Quarter-Sessions.

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Master of the Crown-Office.

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CONTINUATION

A *Chronological* TABLE of the NAMES of the CASES contained in this Volume, according to the Order of their Determination.

An *Alphabetical* TABLE of the NAMES of the CASES compriſed in this Volume.

Rex

CONTI-

CONTINUATION of the DECISIONS OF THE COURT of KING's BENCH UPON SETTLEMENT-CASES;

Containing four additional Years, ending with *Trinity* Term 1772, 12 *G.* 3.

Michaelmas Term 9 Geo. 3. 1768.

Rex *v.* Inhabitants of Stanlake. N° 192

TWO Juſtices removed *Elizabeth Moore*, Wife of *Daniel Moore* deceaſed, her four Children by Him, and two of his Children by a former Wife, from *Stanlake* to *Abingdon*. *Monday* 28th *Novem.* 1768.

On Appeal, The Seſſions diſcharged their Order; ſtating the following Caſe—

Daniel Moore, Huſband of the Pauper *Elizabeth Moore*, and Father of the ſaid ſix Children, was originally ſettled in the Pariſh of St. *Helens* in *Abingdon*. From thence he removed, and went to the

Pariſh of *Stanlake* in the County of *Oxford*. He reſided there ten or eleven Years, in a Tenement which he rented at 3 *l.* 5 *s.* a Year. During the Time of his ſaid Reſidence, the ſaid *Daniel Moore paid* the Poor's and Conſtable's Taxes *in his* OWN *Right*, for the ſaid Tenement. In the Years 1753, 1761, & 1762, (Part of the ſaid Time, for which the ſaid Taxes were paid,) *Receipts* were given for the ſame, *to Him*, by the Overſeers of the Poor of the ſaid Pariſh of *Stanlake*: And the Receipts were *kept by the ſaid Daniel Moore*, on his File of Receipts. The Pariſh-Rates of the Pariſh of *Stanlake*, for the 3 Years in which the ſaid Receipts were given, were produced: When it appeared, "that the LANDLORD "of the ſaid Tenement was *rated* for the ſaid Tenement; and "that *Daniel Moore*, the Huſband and Father of the Paupers, was "NOT rated." It is therefore Ordered by the Court [of Seſſions] that the ſaid Order made by the ſaid two Juſtices of Peace be, and it is hereby diſcharged.

On *Wedneſday* 27th *January* 1768, Mr. Serj. *Nares* moved, on behalf of the Pariſh of *Stanlake*, to quaſh this Order of Seſſions, and to affirm the original Order; inſiſting that *Daniel Moore* did *not* acquire a Settlement in *Stanlake* by the mere *Payment* of theſe Taxes, without having been ever rated to them.

[*V. ante*, pa. 73. N° 21. *Rex* v. Inhabitants of *Sarratt*, accord. Alſo pa. 98. N° 29. *Rex* v. Inhabitants of *Bramſhaw*; and pa. 101. N° 30. *Rex* v. Inhabitants of *Lower Walton*; and pa. 465. N° 148. *Rex* v. Inhabitants of *Painſwick*.]

On *Saturday* 23d *April* 1768, Sir *Fletcher Norton* and Mr. *Wallace* ſhewed Cauſe, on behalf of the Pariſh of St. *Helen*'s in *Abingdon*.

They agreed, "that he muſt be *virtually* rated:" But it was not neceſſary to rate Him by Name. And as this Man is ſtated "to have paid theſe Taxes in his *own* Right," He muſt conſequently have been rated to them. If he was rated any One Year, it is ſufficient. Now it only appears, that as to the three particular Years for which the Receipts were produced, he was not rated in *them*: But it does not follow, "that he was not rated in thoſe "*other* Years for which he paid the Taxes in his *own* Right"; nor is ſtated, that he was not rated in thoſe *other* Years.

THE COURT ſent it back, to be more fully and clearly ſtated; It not being at preſent ſtated, whether he was or was not rated in and for the *other* ſeven or eight Years.

On

On *Monday* 21ſt *November* 1768,

The Caſe having been re-ſtated, " That he *never was rated*, nor " ever paid theſe Taxes in his *own* Right; but that his *Landlord* " was rated; and though *Moore* paid One Year, he was repaid by " his Landlord;"

Serjt. *Nares* renewed his former Motion; and obtained a

RULE *to ſhew Cauſe.*

And now, on the 28th,

Sir *Fletcher Norton* gave up his Order, as at preſent ſtated.

Whereupon, the Serjeant's Rule was made abſolute, to Quaſh the Order of Seſſions, and affirm the Original Order.

Rex *v.* Inhabitants of Notton. Nº 193.

TWO Juſtices removed *Benjamin Watſon* and *Ann* his Wife from *Royſtone* in the *Weſt Riding* of *Yorkſhire*, to *Notton* in the ſaid *Riding*. *Notton* appealed to the Seſſions; who confirmed the ſaid Order; ſtating the following ſpecial Caſe, *viz.* That *Benjamin Watſon* the Pauper, when an Infant, was bound out a *Pariſh-Apprentice* by the Churchwardens and Overſeers of *South Heendley* in this *Riding*, to *Hannah Cuttle* of the *ſame Place* Widow, Occupier of a Farm within the ſaid Townſhip, until he ſhould attain the Age of 24 Years: Which Indenture was ſigned by and had the Allowance of two Juſtices of the Peace for the ſaid *Riding*. *Monday* 28th *Novem.* 1768.

That after he had ſerved about *ſix Years*, ſhe *quitted the ſaid Farm* to her Son *Stephen Cuttle*, and *left the ſaid Apprentice there*, with her Son *Stephen Cuttle*.

That the ſaid Pauper *lived with the ſaid Stephen Cuttle ſeveral Years*.

That then, being *deſirous to leave the ſaid Service*, He applied to his Maſter: Who told Him " HE MIGHT GO WHERE HE " PLEASED."

That *thereupon he left his ſaid Maſter*; and went to the publick Statutes at *Wakefield* in this *Riding*, and *hired* Himſelf to one *John Walker* of *Ardſley for a Year*: And that afterwards he *hired* Himſelf to *ſeveral* different Places; but *did not continue* in *any* of them for 12 *Months*.

That

That be *received the Wages* at every of theſe Places, for his *own* Uſe; and *never accounted* either with the ſa d *Stephen Cuttle*, or the ſaid *Hannah*.

That in or about the Month of *May* or *June* 1766, the ſaid *Stephen Cuttle gave up his Indentures* to Him.

That in *February* 1767, *John Baildon* of *Notton* wanting a Servant, one *Richard Dewhurſt* of *South Heendley* informed Him "that "the Pauper was in their Town, and out of Place". That thereupon, the Pauper *hired Himſelf* to the ſaid *John Baildon*, and ſerved the ſaid *Baildon at Notton* aforeſaid until ſome time in *Auguſt* following; when he left his Service; and has done no Act ſince, whereby to gain a Settlement.

That the ſaid *Dewhurſt*, ſoon after his Converſation with *Baildon*, acquainted the ſaid *Stephen Cuttle* "that he had recommended the "Pauper to *Baildon*'s Place": And that the ſaid *Stephen Cuttle* thereupon ſaid, "He thought it a good Place for Him."

That the ſaid Pauper, in the Month of *May* 1767, *attained his Age of* 24 *Years*.

And this Court [the Seſſions] being of Opinion "that the *Ser-* "*vice* of the ſaid Pauper with the ſaid *John Baildon* as aforeſaid, "*was a Service* UNDER *the Indenture*, until he attained his Age "24 Years; and that ſuch his Service, being above 40 Days, was "*Sufficient* to gain Him a Settlement;" do adjudge the laſt legal Settlement of the ſaid *Benjamin Watſon* and *Ann* his Wife to be in *Notton* aforeſaid; and the ſaid Order of Removal to be confirmed.

V. ante. N° 174, pa. 543, 544. Rex *v.* Inhabitants of *St. Luke*'s in *Middleſex*, in Point "that the Settlement is in *South* "*Heendley*." *v.* alſo, N° 91, N° 95, and N° 186.

Mr. *Fearnley*, ſupported by Sir *Fletcher Norton*, had moved, on *Wedneſday* the 9th Inſtant, to quaſh both theſe Orders: And Mr. Solicitor General *(Dunning)* and Mr. *Leigh* now ſhewed Cauſe why they ſhould not be quaſhed.

The two former argued, that the Pauper *Benjamin Watſon* did *not* gain a Settlement in *Notton*: For, there was no Service in *Notton*, *under* the Indenture of Apprenticeſhip. The Indentures were actually *given up*, before the Pauper hired Himſelf to *Baildon*: He hired Himſelf, as being *ſui juris*. Beſides, The Maſter did not conſent to the Pauper's ſerving any * *particular Perſon*. He was not even conſulted, either by the Pauper or by *Baildon*, about his hiring Himſelf to *Baildon*. *Dewhurſt* did not acquaint Him of it till afterwards; And it was not at the Requeſt of either *Baildon*

* *Vide ante.* N° 174. pag. 544.

or

or *Watſon*, that he told Him of it at all: And when he did acquaint Him of it, *Cuttle*'s Anſwer does not imply that he conſented to it. *Cuttle* had only given his Apprentice a *general* Leave "to "go where he pleaſed." No Settlement could be gained under ſuch a general Diſcharge, by ſerving upwards of forty Days.

The two latter Gentlemen argued, that the Pauper gained a Settlement at *Notton*, by having lived there above 40 Days in the Character of *Apprentice to Cuttle*. *Hannah Cuttle* had not given up the Indentures: Her Son alone could not do it. If the Maſter was privy to this Service of *Baildon*, and * conſented to it, or approved of it, it was then a Service of the original Maſter, though actually done to *Baildon*. But

*V. *ante*, N° 91. and N° 95.

The Court were clearly of Opinion, that the Service with *Baildon* in *Notton* was *not* a Service UNDER *the Indentures of Apprenticeſhip*: Conſequently, his Reſidence in that Pariſh upwards of forty Days was *not* ſufficient to gain the Apprentice a Settlement there. And accordingly,

BOTH ORDERS were QUASHED.

Rex *v.* Inhabitants of Bitton. N° 194.

Monday 28th *Novem.* 1768.

TWO Juſtices removed *George Battman*, Coal-miner, and *Mary* his Wife, from the Pariſh *St. Philip* and *Jacob* in the County of *Glouceſter* to the Hamlet of *Bitton* in the ſaid County: And, on an Appeal, their Order was confirmed. The Seſſions ſtated the following Caſe—

George Battman, the Pauper, being legally ſettled in the Hamlet of *Bitton*, *built a Cottage*, at his own Expence, on the *Waſte* in the Hamlet of *Oldland*, the ſaid Waſte being within a Manor belonging to Mrs. *Archer*. The ſaid *George Battman* lived in the ſaid Cottage for *nineteen Years and an half* without Interruption; but *never paid* any *Taxes*, or was *rated* for the ſaid Cottage; or took any Leaſe of the Ground on which the ſaid Cottage was built, from the Lady of the Manor; or had any Leave or Licence to erect the ſaid Cottage. About *twenty* Years ago, the ſaid *George Battman* was turned out of the Poſſeſſion of the ſaid Cottage, by an Ejectment brought by a Perſon claiming the ſame under a Mortgage

Mortgage thereof made by the ſaid *Battman* for the Sum of fifteen Pounds: And ſome time after that, (which was more than twenty Years ago,) the ſaid *Battman* and the Mortgagee *ſold* the ſaid Cottage to One *Williams*, for twenty-eight Pounds; and the ſaid *Battman* had five Pounds, Part of the Purchaſe-Money.

Mr. *Bearcroft* moved to quaſh theſe Orders: For that the Pauper had reſided forty Days upon his own, and was become irremovable from it, and conſequently gained a Settlement in the Place where it lay.

RULE *to ſhew Cauſe why both Orders ſhould not be quaſhed.*

Mr. Solicitor General (*Dunning*) and Mr. *Selwyn* now ſhewed Cauſe againſt quaſhing them. They urged, that the Pauper had *no Right* to this Cottage, either legal or equitable. He had no Leave from the Owner of the Soil, to erect it: He never was rated or paid any Taxes for it. The *value* of this Cottage is not ſtated. If he had *purchaſed* it, for a Conſideration under thirty Pounds, it would not have given Him a Settlement after he ceaſed to * inhabit it. But here he has only *ſtolen* it: And ſurely He ought to be in a better Condition as a Thief, than he would have been as a Purchaſer. If it were admitted, "that twenty Years Poſſeſſion would * make a Title," yet no ſuch Poſſeſſion is here ſtated: And the Court cannot preſume it. The Poſſeſſion expreſsly here ſtated falls *ſhort* of twenty Years: It is only nineteen and an half. But

* *V.* 9 Geo. 1. c. 7. § 5.

* *V.* 1 *Strange* 608, 609. between the Pariſhes of *Aſhbrittle* and *Wyley*.

THE COURT were ALL of Opinion "that it appeared "to be a Poſſeſſion of *more than twenty* Years." He was Himſelf in Poſſeſſion nineteen Years and an half: And the Mortgagee's Poſſeſſion muſt be alſo conſidered as *his* Poſſeſſion. Upon the whole, his Poſſeſſion was upwards of 20 Years.

BOTH ORDERS QUASHED.

N° 195.

Rex *v.* Inhabitants of Garway.

Monday 28th *Novem.* 1768.

TWO Juſtices removed *John Pritchard*, Shoemaker, and *Joan* his Wife, from the Pariſh of *Arcop* in the County of *Hereford* to the Pariſh of *Garway* in the ſame County: And their Order

Order was confirmed by the Seſſions; who ſtated the following Caſe—

The Pauper *John Pritchard* was born in the Pariſh of *Kilpock*, in the ſaid County. He afterwards lived in the ſaid Pariſh of *Garway*, about four Years; and rented a Tenement of eight Pounds a Year; and was *rated and paid* to the *Pariſh Taxes in* the ſaid Pariſh of *Garway*, during the Time he lived there. About 35 or 36 Years ago, He went and lived with his Father in a *Cottage built upon the Waſte* in the ſaid Pariſh of *Arcop* where his Father had then lived about thirty Years. That as long as the Pauper remembers, (which is about *ſeventy* Years) a *Houſe ſtood upon the ſame Spot*; and the Land belonging to it, incloſed. That ſoon after the Pauper went to live with his Father, his *Father died*; and the *Pauper continued in Poſſeſſion* of the Premiſſes (being his Father's Eldeſt Son) *till the Time of his ſaid Removal* to the ſaid Pariſh of *Garway*; the *Pauper having paid an Acknowledgment* of two Shillings and Six pence to the Lord of the Manor, for the laſt thirty Years: But, to his Knowledge, his *Father never paid any Acknowledgment*. The Premiſſes were of the yearly Value of *fifty Shillings*, or thereabouts.

The SESSIONS therefore doth confirm the ſaid Order: And they order the Churchwardens and Overſeers of the Poor of *Garway*, ſome or one of them, on ſight, to pay to the Churchwardens and Overſeers of the Poor of *Arcop*, or ſome or one of them, the Sum of ten Shillings, the Coſts of the ſaid Appeal.

Mr. *Poole* had moved, on *Saturday* the 19th Inſtant, to quaſh theſe Orders; and had a Rule to ſhew Cauſe.

And, this Day, Mr. *Poole* moved to make his Rule abſolute; upon an Affidavit of Service.

BOTH ORDERS were QUASHED, without Defence.

See the laſt preceding Caſe, No 194.

Hilary Term

9 Geo. 3. 1769.

N° 169. **Rex *v.* Inhabitants of Allcannings.**

Friday 27th *Jan.* 1769.

TWO Juſtices removed *Thomas Palmer*, *Sarah* his Wife, and their ſeven Children, from *Patney* in *Wilts*, to *Allcannings*: And upon an Appeal, the Seſſions confirmed their Order; ſtating the following Caſe——

Thomas Palmer, the Father, was ſettled in the Pariſh of *Allcannings* aforeſaid, until *Michaelmas*. 17 ; when he went to reſide in the Pariſh of *Patney* aforeſaid. In 176., whilſt he lived in the Pariſh of *Patney* aforeſaid, He was, at a Court-Leet held in and for the Manor and Pariſh of *Patney* aforeſaid, SWORN *Tythingman* for the ſaid Manor and Pariſh of *Patney*, in the Manner following, to wit, " The Jurors preſent to the Office of Tythingman for the *Year* " *enſuing*, Mr. *John Amor*; who, by *Leave* of the Court, PUTS IN " HIS PLACE *Thomas Palmer*: And *He is* SWORN." Accordingly, He the ſaid *Thomas Palmer*, the Father, lived in the Pariſh of *Patney* aforeſaid, and SERVED the ſaid Office of *Tythingman* there, for the Year then enſuing. It further appeared to the Seſſions, from the the Evidence of the ſaid *Thomas Palmer* the Father, That the Houſe which Mr. *John Amor* occupied was then *in Turn* to furniſh a Tythingman for the ſaid Pariſh of *Patney*; and that the ſaid *John Amor* ſaid to the ſaid *Thomas Palmer* the Father, " Go " up to Court, and be ſworn *in my Place*;" and that the ſaid *Thomas Palmer*, the Father, was *ſworn* Tythingman of the Pariſh of *Patney accordingly*; And that He SERVED the ſaid Office for the Year then next enſuing: But that the ſaid *John Amor* PAID the Pauper *all his Expences* attending the Execution thereof; and at the Time of entering upon his ſaid Office, he was a *Common Labourer*, and an Houſekeeper living in the ſaid Pariſh of *Patney*. The Seſſions therefore confirm the ſaid Order.

On *Saturday* 19th *November* 1768, Mr. Serjeant *Burland*, on behalf of the Pariſh of *Alcannings*, moved to quaſh both theſe Orders; inſiſting that the Juſtices were miſtaken in determining "that "the Pauper was not ſettled at *Patney*, where he had executed this "Annual Office for a year." For it is enacted by 3, 4 *W. & M. c.* 11. § 6. "that if any Perſon who ſhall come to inhabit in any Town "or Pariſh, ſhall *for Himſelf* and on his *own Account* execute any "public Annual Office or Charge in the ſaid Town or Pariſh du-"ring one whole Year, he ſhall be deemed to have a legal Settle-"ment in the ſame, though no ſuch Notice in Writing be delivered "and publiſhed, as was therein before required." Now this Man did *execute* ſuch an Office *for Himſelf* and *on his own Account*; and though he was *ſworn in* at the Requeſt of another Perſon, yet his being ſo ſworn in was a ſufficient Act of *Notoriety*, to amount to Notice under this Act of Parliament: And the Pauper was the Perſon *reſponſible*. Therefore he prayed and obtained a

RULE *to ſhew Cauſe why the Orders ſhould not be quaſhed.*

Mr. *Dunning*, Solicitor General, now ſhewed Cauſe. He denied, that the Pauper executed the Office *for Himſelf* and on his *own* Account: on the contrary, He was the mere *Deputy* and *Subſtitute* of Mr. *Amor*; and was paid by Mr. *Amor* all his Expences attending the Execution of it. He cited the Caſe of the King againſt the Inhabitants of *Winterbourn*, *ante*, pa. 520. N° 167. which was circumſtanced very like the preſent Caſe: and it was there determined "that the Subſtitute gained no Settlement," though he was ſworn in to the Office.

Serjeant *Burland* anſwered, that there was a material Difference between the Caſe cited by Mr. Solicitor General, and the preſent Caſe. For, in the cited Caſe, *Merrick* was *never preſented* to the Office at any Court-Leet, as Conſtable in his own Right; which the Cuſtom required all Conſtables to ſerve for that Tithing to be: And conſequently he was never appointed at the Cout-Leet, though he was ſworn in before a Juſtice of Peace. Whereas here it is ſtated "that *Palmer*, the Pauper, was ſworn in *at* the Court-"Leet, by Leave of that Court:" And, conſequently, he was appointed *by* the Court-Leet; and it was for Himſelf and on his *own* Account, that he executed the Office. This would be a good Title for him, upon an Information in nature of a *Quo Warranto* to ſhew by what Authority he took upon Him to execute the Office:

Whereas *Merrick* was no more than Deputy or Subſtitute to Mr. *Baily*. This Man's being appointed by and ſworn in at the Court-Leet was a Matter notorious to the Pariſh: And they might have removed him, if likely to become chargeable to them. It was Mr. *Amor*'s Turn to furniſh a Tythingman. Now ſuppoſing Mr. *Amor* to have only *changed* Turns with the Perſon who ſtood next in Turn to him; and that ſuch Perſon had been appointed and ſworn in at and by Conſent of the Leet, for that Year, and *Amor* in like manner for the next Year; would not they *Both* have been Conſtables for themſelves, in their own Right, and on their own Account? In a Caſe between the Inhabitants of *Sheepshead* and *Melborne*, [v. *ante*, pa. 244. N° 83.] 2 Sir *J. S.* 1225. the officiating Schoolmaſter was conſidered as a Deputy; becauſe the Right was not in Him. But here the legal Right was in the Pauper; and He, not *Amor*, was reſponſible for his Conduct in the Office. The Serjeant added, that this Act of Parliament (of 3, 4 *W. & M.*) ought to be conſtrued liberally in favour of Settlements; becauſe it reſtores Peoples natural Rights: And he obſerved, that it only ſays "that if the "Perſon ſhall *execute* the Office for himſelf and on his own Ac-"count;" but that does not require that he ſhould be *choſen* in his own Right.

Lord Mansfield— My Brother *Burland* has argued this Point very ingeniouſly: But it ſeems to me to be a plain Caſe.

The Queſtion is, "Whether the Pauper ſerved this Office for "Himſelf and *on his own Account*; or not." The Queſtion is not, "how he was *preſented to it*;" but "how he *ſerved* it." Mr. *Amor* was the Perſon in turn to furniſh a Tythingman: And He, by Leave of the Court, puts this Man, a Day-Labourer, in his Place, and pays Him all his Expences attending the Execution of the Office. And *Amor* received the Benefit of it, by being diſcharged of his Obligation to ſerve in this his Turn. Therefore he ſerved *for Amor*. It is true, that *Amor* was not liable for his Miſconduct; For, he was not Deputy to *Amor*: But yet it is clear, that he executed the Office *for Amor*, and *not for Himſelf* and on his *own* Account, according to the Intent and Meaning of this Act of Parliament.

Mr. Juſtice Yates —— In the Caſe of *Winterbourn*, the Pauper was conſidered as a Subſtitute. Here indeed the Man was ſworn in at the Court-Leet; which the other was not, nor even preſented at it: But he appears clearly to have ſerved the Office *for* Mr. *Amor*; and not to have executed it for *Himſelf*, and on his *own* Account. This Act of Parliament meant and intended ſuch Perſons as

as were conſiderable enough in a Pariſh, to ſerve ſuch Offices for *Themſelves* and on their *own* Accounts: which this Man was not.

Mr. JUSTICE ASTON was of the ſame Opinion, "that "this Man appeared clearly to have ſerved for *Amor*; and not "to have executed the Office *for Himſelf* and on his *own* Account." Though he was indeed ſo far the legal Officer, that he might have had a good Defence upon an Information in nature of a *Quo Warranto* brought againſt Him, for executing the Office; yet it don't follow, that he executed it *for Himſelf* and on his *own* Account, within the Intent and Meaning of this Act of Parliament.

Mr. JUSTICE WILLES concurred in Opinion, for the Reaſons above particularly ſpecified.

THE COURT were unanimous in diſcharging the Rule to ſhew Cauſe why the Orders ſhould not be quaſhed.

BOTH ORDERS were AFFIRMED.

N. B. As the Caſe of *Winterbourn* reported in my 2*d*. Volume N° 167. is here cited and referred to, I deſire to take this Opportunity of correcting a ſmall Error committed in the 15*th* line of Page 521.; where, inſtead of ſaying, that "Mr. "*Selwin* and Mr. *Vernon* had obtained the Rule," I ſhould have ſaid, that "Mr. *Selwyn* and Sir *Fletcher Norton* had ob-"tained the Rule."

Eaſter Term

9 Geo. 3. 1769.

No. 197. Rex *v.* Inhabitants of Walpole St. Peter's.

Tueſday 23. *May* 1769. TWO Juſtices removed *Henry Skekell* from, *Wiſbech St. Peter's* in the *Iſle* of *Ely* to *Walpole St. Peter's* in *Norfolk:* And their Order was confirmed upon an Appeal to the Seſſions; who ſtated the following Caſe—

Henry Skekell, the Pauper, was *born* at *Leverington* in the ſaid Iſle, about *Michaelmas* 1740, where his *Father* then occupied a Farm of about 50 *l.* a Year, which he occupied about four Years and a half; and then he removed, with his Father and Family, to *Emneth* in the County of *Norfolk*, to a Farm which his ſaid Father rented and occupied *there*, of about 100 *l.* a Year; which Farm he occupied eight Years; during all which Time, he continued with his Father as *Part of his Family*. From thence, he removed, with his Father, to *Leverington* aforeſaid, to an Eſtate which his ſaid *Father purchaſed* there, at the Price of 60 *l.* where he continued with his ſaid Father as *Part of his Family*, for one Year. From thence, he removed, with his ſaid Father, as Part of his Family, to OUTWELL in the ſaid Iſle, to a Farm which his ſaid Father rented and occupied *there*, of about 60 *l.* a Year; and continued there about a Year and a half; and then he let Himſelf as a hired Servant, for a Year, to *Mathew Martin* of *Parſon Drove* in the ſaid Iſle Farmer; in which Service he continued about *ſix* Months, and then *went back* to his Father at OUTWELL aforeſaid; with whom he continued to live, *as part of his Family*, for about three Years; when he *liſted* Himſelf for a SOLDIER, and continued in the Service four Years; when he received his Diſcharge at *Cork* in *Ireland*, in the Beginning

Beginning of the Year 1764, between *Candlemas* and *Lady-day*. About three Months after his Diſcharge, he came home to his Father, who *then* lived at WALPOLE aforeſaid, and rented and occupied *there* a Farm of about 50 *l.* a Year; and continued with his Father *there* about 12 or 14 Weeks; and afterwards worked at different Places as a Labourer; and about *Candlemas* 1767, he married; and then went, with his Wife, to his Father's at *Walpole* aforeſaid, maintaining Himſelf and his Wife, by his Labour, till the *Lady-day* following; and then went, with his Wife, to a Cottage at *Walpole* aforeſaid, which he rented and occupied at thirty Shillings a Year, but was never charged to nor paid any Pariſh-Rates there, and there continued till *Lady-day* 1768; and has ever ſince employed Himſelf as a Labourer, at different Places, till the Month of *December* laſt, when he was removed, by Order as aforeſaid, from *Wiſbech* to *Walpole*; and *never gained* a Settlement by any Act of his *own*. The Seſſions confirm the Original Order, upon the Merits.

Mr. *Blackſtone* moved, on *Monday* the 17th of *April* 1769, to quaſh both theſe Orders: For that the Pauper's legal Settlement was at *Outwell*; which was the place of his Father's Settlement at the *Time* of his Pauper's leaving his Father's Family; and conſequently, the Pauper's own derivative Settlement. The Son, by liſting Himſelf for a Soldier, and continuing four Years in the Service, became *emancipated* from his Father's Family: and not having gained any ſubſequent Settlement for himſelf, muſt reſort to his old derivative Settlement at *Outwell*; and could not, after ſuch an Emancipation from his Father's Family, gain a Settlement at *Walpole St. Peter's*, where his Father had newly and ſubſequently gained a Settlement, but had none there when the Son left Him and ceaſed to be Part of his Family. If he had been examined concerning the Place of his legal Settlement, he muſt have declared it to be at *Outwell*: For he could not be ſuppoſed to know any thing of his Father's having gained any other Settlement ſubſequently to his quitting his Family. He cited two Caſes which prove "That if a grown up Son does not remove with his Father, "he can gain no Settlement in the Place to which his Father re-"moves, by virtue of his Father's gaining a Settlement there." One of them is in 1 Sir *J. Strange*, *pa.* 438. between the Pariſhes of *Eaſt Woodhey*, and *Weſt Woodhey*: The other, in his 2d *Vol.* 831. between the Pariſhes of St. *Michael Coſlany* in *Norwich*, and St. *Matthew*'s in *Ipſwich*. He obtained a

RULE to ſhew CAUSE.

Which

Which Rule was, this Day, made abſolute, upon an Affidavit of Service, without any Defence.

BOTH ORDERS QUASHED.

No 198.

Rex *v.* Inhabitants of Rumſey infra.

Thurſday 27th *April* 1769.

TWO Juſtices removed *Saul Biſhop* and *Martha* his Wife, and *Saul* their Son (aged about two Years,) from St. *Michael*'s in *Southampton* to *Romſey infra*, (both in the County of *Southampton*:) And upon an Appeal from their Order, the Seſſions confirm it; ſtating the following Caſe——

Saul Biſhop was, about nine Years ago, bound Apprentice by Indenture, for four Years, to *William Kearly* of the Pariſh of *All Saints* in the Town of *Southampton*; with whom he there ſerved and reſided for three Years; and then it was agreed between the ſaid *William Kearly*, *Saul Biſhop*, and one *Samuel Dagnell*, "that the ſaid *Saul* "ſhould *work with the ſaid Dagnell* the Remainder-part of the Ap- "prenticeſhip: for which, *Kearly* was to receive two Shillings *per* "Week." He ſerved and reſided with Him accordingly, in the Pariſh of *Romſey infra*. The ſaid *Samuel Dagnell* during the whole Time reſided within the Pariſh of *Romſey infra*, under a Certificate from the Pariſh of St. *Giles*'s in *Reading*. This Court [the Seſſions] is of Opinion, and doth adjudge, "that the ſaid recited Order ought "to be confirmed:" and the ſame is hereby confirmed accordingly.

On *Friday* 10th *February* 1769, Mr. *Impey* moved to quaſh theſe Orders; as no Settlement could be gained to this Apprentice by ſerving *Dagnell* in *Romſey*, becauſe he reſided there under a Certificate. It would be very hard upon Pariſhes, if irremoveable Certificate-men could charge them with their Apprentices: And therefore the 12 *An. c.* 18. § 2. was calculated to prevent this Inconvenience. And the preſent Caſe is within the Letter and Spirit of that Act. It recites how unreaſonable it is, that Certificate-perſons who can gain no Settlement for themſelves ſhould yet burthen Pariſhes with their Apprentices and Servants; and therefore enacts "that their Appren- "tices or hired Servants ſhall *not* gain Settlements in virtue of their "Apprenticeſhip, or hiring and Service." And this Aſſignment of

the Apprentice to a Certificate-man is exactly within the ſame Reaſon as if the Original binding had been to the Certificate-man.

Mr. *Dunning* (Solicitor General) and Mr. *Wallace* now ſhewed cauſe; and argued that this Apprentice gained a Settlement in *Romſey*, not as ſerving the Certificate-man, but as ſerving *Kearly* his original Maſter, in that Pariſh. An Apprentice to a Perſon *not* a Certificate-man, ſerving a Perſon who *is* a Certificate-man, by Leave, Approbation and Conſent of his original uncertificated Maſter, gains a Settlement in the Pariſh where he ſo ſerves: The Duty muſt be conſidered as performed *to the Original Maſter*; and it was, in the preſent Caſe, for his Benefit, as well as by his Order. The Act of 12 *An. c.* 18. does not extend to this Caſe. The Words of it are deciſive: They are confined to Apprentices bound by Indenture *to* certificated Maſters, and claiming Settlements by ſerving under ſuch Indentures of Apprenticeſhip to original Maſters who came into the Pariſh by Certificate. But this Apprentice was bound to a Maſter who was *not* a Certificate-man: He was in no Senſe Apprentice to the Certificate-man; but originally was, and continued to be the Apprentice of *Kearly*; and the laſt 40 Days of his Service by the Permiſſion and Approbation of his original Maſter gained Him a Settlement: To prove which, they cited the Caſe of the *King* againſt the Inhabitants of *Eaſt-Bridgeford*; which may be ſeen *ante*, pa. 133. N° 43.

Mr. *Morton* and Mr. *Impey* inſiſted, that the true Meaning and the ſound Conſtruction of this Act of Parliament is, that no Apprentice or hired Servant ſhall gain a Settlement in a Pariſh to which the Maſter came by Certificate, and in which the Maſter himſelf was thereby precluded from gaining one: They even carried it ſo far as to ſay, that the Letter of the Act would ſupport this Conſtruction of it.

Lord Mansfield—This Queſtion is plainer than any Argument can make it. The End and Intention of this Act of Parliament was to prevent Certificate-perſons from bringing a Charge upon the Pariſhes into which they came by Certificate. How can it be imagined, then, that *another Man*'s Apprentice ſhould gain a Settlement by ſerving Him in that Pariſh, when his *own* Apprentice is made incapable of doing ſo?

Mr. Juſtice Yates—The Intention of this Act of Parliament is, that a Certificate-man ſhall not be the *Inſtrument* of the Apprentice's gaining a Settlement in the Pariſh *to which* he Himſelf came by Certificate; though he may indeed be an Inſtrument of his gaining

gaining One in a *third* Pariſh. As in the Caſe of the *King* againſt the Inhabitants of *Petham*. [See this Caſe, *ante*, pa. 154. N° 54. and particularly, Pages 155, 156, and 157.] So, in the Caſe of the *King* againſt the Inhabitants of *Eaſt-Bridgeford*, *Eaſt-Bridgeford* was a *third* Pariſh, and not the Pariſh to which *Edward George*, the Aſſignor of the Apprentice to *Baggaley*, was certificated. There is nothing in that Caſe of *Eaſt-Bridgeford*, which contradicts the Poſition, "that no Certificate-man ſhall be the Inſtrument of an Ap-"prentice's gaining a Settlement in the *ſame* Pariſh into which He "Himſelf came under Certificate."

Mr JUSTICE ASTON ſpoke to the ſame Effect. The Principle is, that the Certificate-man ſhall not be an Inſtrument of burthening the *ſame* Pariſh with the Apprentice: But there is no Eſtoppel or Concluſion between the Pariſh that gave the Certificate, and a *third* Pariſh.

Mr. JUSTICE WILLES concurred in the ſame Opinion.

THE COURT were therefore unanimous, that both Orders ought to be quaſhed: And accordingly,

BOTH ORDERS were QUASHED.

NOTE—There was a Caſe circumſtanced a good deal like the preſent, which came before this Court in *Eaſter* Term 15 *G.* 2. and again in *Mich* 16 *G.* 2. and a third Time in *P.* 16 *G.* 2. but was never determined. The Pauper, *Nicholas Davis*, legally ſettled in *Deverell Longbridge*, was regularly bound by the Pariſh-officers to *Thomas Woodyear* of *Weſtbury* till 24; and ſerved him there, about two years and an half: When *Woodyear*, by a verbal Contract between him and one *Joel Toop* of *Beckington*, who reſided there under a Certificate from the Pariſh of *Berkeley*, turned the Pauper over to the ſaid *Toop*, for the Reſidue of the Term; and he accordingly ſerved *Toop*, in *Beckington*, eight Years. Then *Toop* ſold Him to *Peter Pain* of *Deverell Longbridge*, for the Reſidue of the Term, for the Sum of 40 *s.* and thereupon the Pauper ſerved *Pain* in *Deverell Longbridge* about half a Year; when, *Pain* and the Pauper diſagreeing, *Pain* agreed to diſcharge Him of the ſaid Term, for a Sum of Money; and thereupon, the Pauper procured the ſaid *Toop* to advance and pay ten Shillings to *Pain*, on that Account. And then

the Pauper returned to, lived with, and ſerved the ſaid *Toop*, in *Beckington*, for about half a Year. The Seſſions were of Opinion "that the Pauper gained a Settlement in "*Deverell Longbridge*, by his Service to *Pain* there;" and confirmed the original Order removing Him thither. Mr. *Gould* moved to quaſh both thoſe Orders; and was afterwards ſupported by the late Earl of *Northington*, then Mr. *Henley*. They argued, 1ſt, That an *Aſſignment* to a Certificate-man is not within 12 *Ann. c.* 18. which extends, as they ſaid, only to an *Original Binding to* a Certificate-man. 2dly, That the ſecond Aſſignment (*viz.* from *Toop* to *Pain*) was bad, for want of the Privity and Conſent of *Woodyear*, the original Maſter. 3dly, That if the ſecond Aſſignment were good, the third muſt be equally ſo; and conſequently he remains ſettled at *Beckington*: For, it was not in *Pain*'s Power to diſcharge this Apprentice, without the Interpoſition of the Quarter-Seſſions; and if *Pain* could not diſcharge Him, then his laſt Half-Year's Service at *Beckington*, was under the Original Binding; the Service to *Toop* there being in point of Law an actual Service of the firſt Maſter, and to be conſidered as ſerving *Woodyear* in *Beckington*. This Court took Time to adviſe: and on *Monday* 16th *May* 1743, upon Mr. *Henley*'s moving for the Opinion of the Court, Lord Chief Juſtice *Lee* told him "there was ſome Difference in Opinion; and the Court "not being full (for Mr. Juſtice *Chapple* was then ill at "*Bath*,) it was proper to ſtay till it ſhould be ſo." But it never came on again, I believe.

Trinity Term

9 Geo. 3. 1769.

No 199.

Rex *v.* Inhabitants of Friendſbury.

Monday 12th *June* 1769.

TWO Juſtices removed *Jonathan Bowler*, *Sarah* his Wife, and their four Children (ſpecifying their Names and Ages,) from *Sheerneſs* to *Friendſbury*, (Both in *Kent*:) And the Seſſions, upon Appeal, confirmed their Order; ſtating the following Caſe—

That *Jonathan Bowler*, when a Boy and unmarried and without Child or Children, hired himſelf, at 50 *s. per Annum*, for a Year certain, to One *Siborne*, who was Boatſwain of the *Chatham* Hulk; and that He continued in his ſaid Maſter's Service, under the ſame Contract and without any freſh hiring, for the Space of EIGHTEEN *Months*. That during all that Time, *Siborne*, the Maſter, kept Houſe and lived and reſided at *Queensborough* in *Kent*, with his Family: But that the Pauper, during the *firſt twelve Months* of his Service, laid out and victualled ON BOARD *the* CHATHAM HULK, in the *River Medway*, which laid at her Moorings there; having the Pariſhes of *Chatham* and *Gillingham* on the Eaſt Side of the River, and the Pariſh of *Friendsbury* on the Weſt Side; But the ſaid Hulk laid *neareſt* to the Pariſh of CHATHAM. That about *Six Months before* the ſaid *Jonathan Bowler* left the Service of his ſaid Maſter *Siborne*, the *Chatham Hulk* went into *Chatham Dock*, to be repaired; and that the ſaid *Jonathan Bowler* was, *during that Time*, by the Order of his ſaid Maſter *Siborne*, removed and laid and was victualled ON BOARD *the* STERLING-CASTLE HULK; which likewiſe laid in the *River*

River Medway, having the Pariſh of *Gillingham* on the One Side, and the Pariſh of *Friendsbury* on the other: But the ſaid Hulk laid *nearer*, by a third of a Cable's length, to *Upnor-Caſtle*, which is in the Pariſh of FRIENDSBURY in *Kent*, than it did to the Pariſh of *Gillingham*. That after the ſaid *Jonathan Bowler* had been on board the *Sterling-Caſtle* Hulk about *five Months*, the *Chatham* Hulk (of which, the ſaid *Siborne* his Maſter ſtill continued Boatſwain) came out of the Dock, and the ſaid Pauper returned on board of Her; where he continued about *a Month*; At the Expiration of which Time, he *quitted* his ſaid Maſter's Service.

That theſe ſeveral HULKS are always *a-float*, and *ſwing-round* with the Change of the Tides: And that the Places where they laid, were the HOMES of each of the Veſſels, reſpectively.

That after the ſaid *Jonathan Bowler* quitted his ſaid Maſter's Service, He entered Himſelf as a Rigger, in his Majeſty's Service, at *Sheerneſs*; where he continued to live and reſide for about 24 Years, and till his Removal by the ſaid Order of two Juſtices.

That SHEERNESS is a *Ville*, and maintains its own Poor.

That the *Way of maintaining* them is, "that the groſs Sum of "*Sixpence* per *Quarter*, and no more, is ſtopt out of the Pay of "every Perſon ſerving in his Majeſty's *Dock-Yard* under the Com-"miſſioners of the Admiralty there, for the Support of a CHEST for "the Maintenance of the Poor. That the Stoppage is made on "every Perſon ſerving his Majeſty as aforeſaid, indiſcriminately, "and without any Attention to his Ability to pay the ſame, or his "being likely to become chargeable to the ſaid Ville of *Sheerneſs*, by "the Pay-Clerks of the Dock-Yard at *Chatham*, (to which, that of "*Sheerneſs* is an Appendage,) before the Commiſſioners of *Chatham* "*Dock-Yard*, at the Time of paying every Perſon's Wages; and "afterwards is paid over, by the Commiſſioner of *Chatham-Dock-*"*Yard*, to the Clerk of the Cheque of *Sheerneſs*; who therewith "relieves the *Caſual*, as well as *ſettled* Poor of the ſaid Ville of "*Sheerneſs*, without the interfering of the Overſeers of the Poor of "the ſaid Ville; who never received theſe Stoppages, but are "wholly employed in obtaining Orders of Removal: And then the "Pay-Books are returned up to the proper Officers in *London*."

That this *Jonathan Bowler*, during all the Time of his Reſidence at *Sheerneſs*, had the uſual Deduction of Sixpence *per* Quarter ſtopt out of his Wages, by the Pay-Clerks, in the *ſame Manner* as *every other* Perſon in his Majeſty's Service there, as aforeſaid.

That there is NO *legal Rate* made by the Overſeers of the Ville of

Sheerneſs, and allowed by Juſtices of the Peace for *Kent*, for the Maintenance of the Poor there: Nor does any Perſon contribute for that Purpoſe in *any other* Manner than as aforeſaid; except that when the Money ſtopt out of the Pay of the Perſons in his Majeſty's Service as aforeſaid, is *not ſufficient* for the Maintenance of the Poor, then *voluntary* Contributions are collected for that Purpoſe, not only from the ſeveral Houſeholders and other Perſons who live there, but from thoſe of the Ordnance, Captains of Ships, and ſuch others who are willing to contribute thereto; and in which Caſe, every Contributor gives what He *thinks fit*, and *no more*. That theſe Stoppages are made in conſequence of an Application, ſome Years ago, from the Perſons in his Majeſty's Service, as aforeſaid, at *Sheerneſs*, to the Commiſſioners of the Admiralty for that Purpoſe, at the Time that the Ville of *Sheerneſs* firſt began to maintain its own Poor, in order to enable them thereto.

THE SESSIONS, after ſeveral Adjournments, CONFIRM the Order of two Juſtices, made for removing theſe Paupers from *Sheerneſs* to *Friendsbury*.

On *Friday* 2d *June* 1769,

Mr. *Robinſon* moved to quaſh both theſe Orders. He denied that *Bowler* the Pauper had gained any Settlement in *Friendsbury*. The floating Hulk, He ſaid, could give Him none there. The *Chatham* Hulk, where he lay and was victualled for the firſt twelve Months of his Service, lay neareſt to *Chatham*: So that his firſt Year's Service was completed in *Chatham*; or at leaſt not in *Friendsbury*, which was not the Pariſh where it lay: And he was on board the *Sterling-Caſtle* Hulk only ſix Months. It is not ſtated, that he ſerved for a Year in *Friendsbury*; nor does it at all appear that he did ſo. It does not even appear that he ſerved his Maſter on board the *Sterling-Caſtle* Hulk: He only went thither for Maintenance. His Maſter had nothing to do there: And therefore he could not be in his Maſter's Service there. Mr. *Robinſon* obſerved alſo, that though the Places where the Hulks lay were the reſpective Homes of the Veſſels, they were not ſtated to be the Home of the Maſter. He inſiſted that the Pauper's true legal Settlement was in *Sheerneſs*; and that he gained a Settlement there, by having contributed for 24 Years, to the Maintenance of the Poor of that Pariſh in the uſual Manner in which the Poor of it are ſupported.

Mr.

Mr. *Dunning* (Solicitor General) now ſhewed Cauſe, on behalf of the Pariſh of *Sheerneſs*. He ſaid, that the preſent Caſe was underſtood by the Seſſions, to have fallen within the Reaſon of the *Dorſetſhire* Caſe of *Bridport* Harbour: [See this Caſe, at large, *ante*, pa. 531. N° 171.] But the Fact is not here ſufficiently ſtated; It being ſtated, "that the *Sterling-Caſtle* Hulk lay *nearer* to the Pariſh of "*Friendsbury*, than it did to the Pariſh of *Gillingham*:" Whereas the Fact was, "that the Hulk on board of which the Boy reſided, "lay *within* the Pariſh of *Friendsbury*." Therefore he propoſed that the Counſel on the other Side ſhould *admit* "that it lay *within* "the Pariſh of *Friendsbury*."

But Mr. Serjeant *Leigh*, who was Counſel for *Friendsbury*, was ſo far from admitting it, that he diſputed its being the *Truth* of the Fact: And he ſaid, there would be a further Doubt, "Whether the Boy "could gain a Settlement by only ſix Months Reſidence on board "the *Sterling-Caſtle*, when he had before gained a Settlement in "*Chatham*, by a complete Year's Service on board the *Chatham* "Hulk." However, he ſeemed chiefly to rely on the Objection of the Pauper's having gained a ſubſequent Settlement in *Sheerneſs*, by *contributing* to the Maintenance of their Poor for 24 Years. He cited *Viner*'s Abridgment, Title "Settlements," Letter K. Caſe 9. The *Queen* againſt the Inhabitants of St. *Giles*'s *Cripplegate* and St. *Mary Newington*; where a Scavenger's Rate, made by Conſtables and Inhabitants only, and allowed to be illegal and void, was yet holden to give a Settlement, as the Money collected under it was to be paid to the public Levies of the Pariſh: Therefore, though the Court held the Rate to be void, yet they held the Payment to be a *Contributing to the public Levies* of the Pariſh; it being a Pariſh-Charge, and the Pariſh having had as much Benefit from the Contribution, as if it had been a good Rate, So here, This Man had contributed 24 Years to the Support of the Poor of the Pariſh of *Sheerneſs*, in the *uſual* Manner, though not the legal One: And that Pariſh have had *equal Benefit* from his Contribution, as if it had been in the ſtrict legal Manner. It is only a new Mode of collecting the Money: And as the Pariſh of *Sheerneſs* have had the very ſame Benefit from it, they ought not now to take Advantage of their *own* Irregularity in the Mode of collecting.

Mr. *Dunning* denied that this Stoppage of Sixpence *per* Quarter for the Cheſt is *ſuch* a Contributing to the public Levies of the Pariſh of *Sheerneſs*, as is ſufficient to gain a Settlement there. As to the Caſe cited from *Viner*—He agreed, that it is not abſolutely neceſſary

ceſſary that a Rate be ſtrictly and exactly legal; provided that it be acquieſced in: If it be acquieſced in by the Pariſh, it would be unreaſonable that the Pauper, who has paid it, ſhould loſe his Settlement. The Rate there mentioned was acquieſced in by the Pariſh: But the Pariſh of *Sheerneſs* could never mean, that their permitting their Poor to receive Relief from this Cheſt ſhould burthen them with all the Workmen of the Dock-Yard. This is no Rate, nor any authoritative Collection, or obligatory Contribution for the general Maintenance of the Poor of *Sheerneſs*. As to its not being ſtated "Whether the Boy ſerved his Maſter on board the *Sterling-Caſtle* Hulk, or not?"—He anſwered, that an Apprentice would gain a Settlement in the Place where he lodged the laſt forty Days; whether his Maſter had Employment for him in that Place or not. As to Mr. *Robinſon's* Obſervation, "that the Place where the Hulks reſpectively lay was not ſtated to be the Home of the Boy's Maſter"—He anſwered, that it was ſtated here, exactly as it was in the Caſe of *Burton-Bradſtock*, "that it was the Home of the Ship:" Which is ſufficient. If the Ship lay in *Friendsbury* Pariſh, the Pauper was certainly ſettled there: (And, upon his appealing to Mr. *Robinſon* for the Truth of that Fact, Mr. *Robinſon* candidly acknowledged "that the Juſtices at Seſſions did think that "the Place where the *Sterling-Caſtle* Hulk lay, was within the Pariſh of *Friendsbury*.")

Lord Mansfield—It is impoſſible to make the Contribution here ſtated a ſufficient Foundation for gaining a Settlement, under the Statute of 3 & 4 *W. & M. c.* 11. § 6. which requires the being "*charged with* and paying his Share towards the public Taxes "or Levies of the Town or Pariſh."

But it ſeems a great Hardſhip upon theſe Men, that they ſhould pay all this Money, and yet have no Benefit from it. And he expreſſed his Diſapprobation of ſuch an improper Method of collecting the Poor-tax.

Mr. Juſtice Yates—In order to gain a Settlement, the Perſon muſt be *rated*, as well as pay.

The whole Court were clear, that the Pauper gained *no* Settlement in *Sheerneſs*, by contributing in this Manner, towards the Maintenance of their Poor. And as to his gaining a Settlement in *Friendsbury*, They ſent it back to the Seſſions, to be reſtated, and to have the Fact aſcertained "Whether the Place where the *Sterling-Caſtle* Hulk lay, was *within* the Pariſh of *Friendsbury*, or not."

But it never came before the Court any more, I believe.

Michaelmas

Michaelmas Term

10 Geo. 3. 1769.

Rex *v.* Inhabitants of Stapleton.

Nº 200.

TWO Juſtices removed *John Mortimer* and *Sarah* his Wife and *Elizabeth* their Daughter, from *Stoney Stanton*, in the County of *Leiceſter* to *Stapleton* in the ſame County: And the Seſſions, upon appeal, confirm their Order; ſtating the following Facts— *Saturday* 25th *Novem.* 1769.

The ſaid *John Mortimer* had gained a Settlement in *Stapleton*. He afterwards went to *live with his Mother*, as *Part of her Family*, at *Stoney Stanton*; where She had a Houſe and a ſmall Parcel of Land, which *She occupied Herſelf*. Whilſt he lived with his Mother, he was in two Rates on Houſes and Lands only, in the ſaid Pariſh of *Stoney Stanton*, (and not upon perſonal Eſtate;) the One, a *Poors Rate* made the 10th Day of *October* 1765; the Other, a *Church Rate* made the 9th Day of April 1766; (and both which were for defraying the Expences of the Year 1765;) *charged as Occupier* of the Land belonging to his Mother; and PAID *ſuch Aſſeſſments*; although he *did not*, during any Part of that Year, *occupy* the Whole or any Part of that Land, or any Houſe or other Land in the ſaid Pariſh of *Stoney Stanton*. At *Lady Day* 1766, and not before, he entered upon his ſaid Mother's ſaid Land, at the yearly Rent of *L.* 5, 10 *s.* and occupied the ſame till the *Chriſtmas* following, and no longer; but neither was charged with nor paid his Share towards any of the public Taxes or Levies of or for the ſaid Pariſh of *Stoney Stanton*, for the Time he occupied the ſaid Land; and there *not* being any *other* Pretence for the ſaid *John Mortimer* and *Sarah* his Wife and *Elizabeth* their Daughter or any of them having gained a Settlement

ment *ſubſequent* to that gained by Him in the ſaid Pariſh of *Stapleton*, than his being *charged and paying to the ſaid two Rates.*

Mr. *Dunning* (Solicitor General) had moved, on *Tueſday* the 14th Inſtant, to quaſh this Original Order and alſo the Order of Seſſions which confirmed it. He ſaid, the Juſtices had quite miſtaken the Law: For that the Pauper had clearly gained a Settlement in *Stoney Stanton*, by having been *rated and paid* his Share towards the public Taxes or Levies of that Pariſh; which, by the 3 & 4 *W. & M. c.* 11. § 6. is made equivalent to Delivery and Publication of a Notice in Writing.

Mr. *Wallace* now ſhewed Cauſe againſt quaſhing theſe Orders. His Argument was, that the Equivalent to Notice, preſcribed by that Statute, is "being charged with and paying *his Share* towards "the public Taxes or Levies of the Pariſh:" So that the Charge muſt be in proportion to what he *occupied*. But this Man occupied *Nothing*. It could not therefore be charged as *his* Share: It was his *Mother's* Share. Conſequently, He is not within the Terms of this Clauſe of the Statute: And his former Settlement in *Stapleton* remains; as he has no other Pretence but *this*, for having gained a *ſubſequent* One.

Mr. *Dunning* replied, that theſe Facts amount to a Public Recognition by the Pariſh, of the Man's Inhabitancy amongſt them: And the Words "*his Share*" mean no more than ſuch Part or Proportion of the whole Tax as was charged perſonally *upon Him*.

THE COURT were very clear, that He gained a Settlement in *Stoney Stanton*, by having been *thus charged*, and having *paid* what he was ſo charged with.

BOTH ORDERS QUASHED.

No. 201.

Rex *v.* Inhabitants of Ipſley.

Saturday 25th *Novem.* 1769.

TWO Juſtices removed *Mary Cauſier*, the Wife of *James Cauſier*, and her two Sons (ſpecifying their Names and Ages,) from *Ipſley* in *Warwickſhire* to *Studley* in the ſame County. The Seſſions, upon an Appeal, quaſh their Order; ſtating the following Facts—

Ann Cauſier, the Mother of *James Cauſier* the Huſband of the Pauper, in the Month of *December* 1740, came into the Pariſh of *Ipſley*, to reſide there under and by virtue of a CERTIFICATE *from Studley* to *Ipſley*, in the Words and Figures following, that is to ſay, " *Warwickſhire*—To the Churchwardens and Overſeers " of the Poor of the Pariſh of *Ipſley* in the County of *Warwick*, or " to Any or Either of them, We *Richard Cooks* and *John Ware*, " Yeomen, Churchwardens of the Pariſh-Church of *Studley* in the " ſaid County of *Warwick*, and *Richard Reeve* and *Thomas Wilkes*, " Overſeers of the Poor of the ſaid Pariſh of *Studley*, Yeomen, do " hereby, for our Selves and Succeſſors, certify, own and acknow- " ledge that *Ann Cauſier*, *Spinſter*, *and the Child or Children that* " *She* NOW GOETH WITH, to be our Inhabitants *legally ſettled with* " *Us* in our ſaid Pariſh of *Studley* in the ſaid County of *Warwick*: " And if at any Time hereafter the ſaid *Ann Cauſier*, or her Child or " Children which She *now goeth with*, ſhall become chargeable to " and aſk Relief of Your ſaid Pariſh of *Ipſley*, We the ſaid Church- " wardens and Overſeers of the Poor of our ſaid Pariſh of *Studley* do " hereby promiſe for Our Selves and Succeſſors, that We will, when " requeſted by Any of You, receive them and relieve them, and " provide for them as our Inhabitants, according as the Law in that " Caſe requires. In Witneſs whereof, We the ſaid Churchwardens " and Overſeers of the Poor to this our Certificate have put our " Hands and Seals this 18th Day of *December* 1740. Church- " wardens, *Richard Cooks* X his Mark; *John Ward* X: Overſeers, " *Richard Reeves* X: *Thomas Wilkes* X. Atteſted by Us—*John* " *Mitchel*: The Mark of X *Richard Mitchel*. We whoſe Names " are hereunto ſubſcribed, two of his Majeſty's Juſtices of the Peace " for the County of *Warwick* aforeſaid, do allow of the above Cer- " tificate: And we do alſo certify, that the Witneſſes who atteſted " the Execution of the ſaid Certificate have made Oath before Us, " that they did ſee the Churchwardens and Overſeers whoſe Names " and Seals are to the ſaid Certificate ſubſcribed and ſet, ſeverally " ſign and ſeal the ſaid Certificate; and that the Name of the ſaid " *John Mitchel* and the Mark of *Richard Mitchel*, whoſe Names are " above-ſubſcribed as Witneſſes to the Execution of the ſaid Certi- " tificate, are of their own proper Hand-writing—Dated the 18th " Day of *December* in the Year of our Lord 1740. *W. Somervile*, " *Edm. Chambers*." And it appearing to this Court [the Seſſions] that the ſaid *Ann Cauſier* was at the Time of her coming to *Ipſley* as aforeſaid, *unmarried* and *pregnant* with the ſaid *James Cauſier*, who

was *born* in the ſaid Pariſh of *Ipſley*, SOON AFTER THE CHRISTMAS FOLLOWING; that the ſaid *James* was born a BASTARD, and afterwards married the Pauper *Mary Cauſier*; and that the ſaid *Mary*, *at the Time of her Removal*, was actually chargeable to the ſaid Pariſh of *Ipſley*; The ſaid Court of Quarter-Seſſions being of Opinion "that "the *Certificate could* NOT *operate or extend to the* BASTARD-*Child* "being then in *Ventre ſa Mere*."

On *Thurſday* 9th *November* 1769, Mr. *Wheler* moved to quaſh this Order of Seſſions; inſiſting that the Pariſh of *Studley* were bound by their Certificate, to indemnify his Clients, the Pariſh of *Ipſley*, from this Child, of which the Mother was pregnant and almoſt ready to be delivered at the *Time* when they gave this ſpecial Certificate acknowledging Her to be *pregnant* though *unmarried*, and promiſing to provide for the Child or Children She *then went with*.

Mr. *Dewes*, ſupported by Mr. Solicitor General (*Dunning*,) now ſhewed Cauſe. They ſaid, this was a fair Tranſaction: There was no Fraud, either ſtated, or that could be preſumed. But it is only a *Contract*, upon which the Pariſh of *Ipſley* may take their legal Remedy: Perhaps it may, or perhaps it may not bind the Pariſh of *Studley as a Contract*. But it is *no* CERTIFICATE within the Act of 8 & 9 *W*. 3. *c*. 30.—The Undertaking relates to a Non-Entity, an Embrio. An unborn Child can't be perſonally certificated. It is no Part of the Parent's Family: And the Act only obliges the certifying Pariſh to provide for the Pauper mentioned in the Certificate, together with his or her Family. And this Child, when born, would be only a Baſtard: But a Baſtard is no Body's Child; and could not therefore be a Part of any Body's Family, in the Senſe of the Act of Parliament. The Makers of the Act had not the Caſe of a Baſtard in their Contemplation: Nor is an unborn Baſtard the Object of a Certificate. A *Baſtard* is ſettled where it is *born*; even though it be the Baſtard of a certificated Perſon *; and even although the Certificate expreſsly undertakes "to provide for the Woman (who was "pregnant at the Time) † *and her Child*." So that the Baſtard would undoubtedly be ſettled in the Pariſh where born, unleſs the Certificate particularly recognizes and expreſsly ſpecifies the ſpecial Circumſtances of the Parent's Caſe. The only Queſtion is, "Whe-"ther its being particularly ſpecified and recognized in the Manner "as it is in the preſent Certificate, makes any Difference." And they endeavoured to ſhew "that it did *not*." But,

* *V. ante*, N° 66. p. 190. *Rex v.* Inhabitants of *Heiton*.

† *V. ante*, N° 90. p. 264, 265. *Rex v.* Inhabitants of *Wyke*.

THE COURT were ſo clearly of a contrary Opinion, that they ſtopt Mr. *Wheler* from replying: For, they unanimouſly held,

that the Pariſh of *Studley* were bound by this Certificate, which takes Notice of the Woman's being then *unmarried* and *with Child*; and acknowledges the *Child She then went with* to be legally ſettled with them in their Pariſh. And,

LORD MANSFIELD obſerved, that the Woman was very big with Child; and was underſtood by both Pariſhes to be ſo: And *Studley* expreſsly promiſed to provide for the Infant ſhe then went with. Therefore they ought to be bound by their Certificate. An Infant *en Ventre ſa Mere* may be, to a Variety of Purpoſes, conſidered as *born:* (of which, he ſpecified a great Number of Inſtances.)

Per Cur. unanimouſly,

ORDER of SESSIONS QUASHED:
ORIGINAL ORDER AFFIRMED.

Rex *v.* Inhabitants of Dedham.

No. 202.

TWO Juſtices removed *Samuel Bolton* and *Mary* his Wife from *Bedfield* in *Suffolk* to *Dedham* in *Eſſex:* And the Seſſions, upon an Appeal, confirmed their Order; ſtating the following Facts— *Tueſday* 28th *Novem.* 1769.

Samuel Bolton, the Pauper, was bred up to the Trade of a Plumber and Glazier. In the Month of *April* 1767, He *let Himſelf* to *John Maſon* of *Dedham* aforeſaid Plumber and Glazier, at the *Wages of ſix Shillings a-week*, *Board*, *Lodging*, and *Waſhing*, *Summer and Winter*. He ſerved *under* THAT *Agreement*, for the Space of *eleven* Months: When his Maſter, having taken an Apprentice, informed Him, "that he muſt lodge out of his Houſe." Upon which, the Pauper demanded Sixpence a-week more; alledging "that he "would *otherwiſe quit the Service*, on account of his Maſter's ha-"ving withdrawn from the original Agreement." He continued to receive the additional Sum of Sixpence a-week, till the *September* following: And during all the ſaid Service, his Maſter paid him his Wages, in different Proportions, as he wanted them. And that, by the aforeſaid Hiring, the *Pauper apprehended* He was BOUND *to ſtay with his Maſter* A YEAR. Whereupon, this Court [the Seſſions] is of Opinion "that the ſaid *Samuel Bolton gained* a Settlement "in the ſaid Pariſh of *Dedham*, by reaſon of the Facts above ſta-"ted;"

" ted;" and doth therefore *confirm* the ſaid Order of the ſaid two Juſtices, for Removal of the ſaid *Samuel Bolton* and *Mary* his Wife from the ſaid Pariſh of *Bedfield* to the ſaid Pariſh of *Dedham*; ſubject to the Opinion of the Court of King's Bench.

Mr. *Thurlow* moved, on *Wedneſday* the 15th inſtant, to quaſh both theſe Orders. His Objection was, " that here is *no Hiring for* " *a Year.*" There is nothing here ſtated, that imports a Contract *for a Year*: And conſequently, the Pauper was *not bound to ſerve a Year*, whatever he Himſelf might apprehend about it.

Mr. *Dunning* and Mr. *Soame* now ſhewed Cauſe againſt quaſhing the Orders. They argued, that here was a Hiring for a Year, as well as a Service for a Year. A *general* Hiring is a Hiring *for a Year*. The Mention of " ſix Shillings *a-week*," is only to aſcertain the *Rate* of the Wages; but does not mean to conſider the Service as a *weekly* Service: And, as the Wages in this Trade are higher in Winter than in Summer, the Words " *Summer and Winter*" ſhew that this was intended to be a continued Contract for *both* thoſe Seaſons; and that by fixing the Wages to be the ſame in both, it was underſtood by Both Parties to be a Contract for the *whole* Year. But it is, at leaſt, an *indefinite* Contract: And an indefinite Contract is a Contract for a Year.

Mr. *Thurlow* was going to reply. But,

Lord Mansfield ſtopt him; ſaying that the Caſe was too plain, to require any Thing more to be ſaid upon it, on Mr. *Thurlow*'s Side.

All the Caſes require a Hiring for a Year. But there muſt be a *reciprocal Obligation* upon both the contracting Parties.

I ſee Nothing here, that can be laid Hold on, to make it a Hiring for a Year. It was a Hiring at ſo much *a-week*: And when the Maſter could not lodge the Servant any longer, they came to a new Agreement for an additional Sixpence *a-week*. The Servant at that Time alledged, " that he would quit the Service, unleſs the " Maſter would comply with his Demand:" And to prevent his doing ſo, the Maſter complied, and agreed to pay Him Sixpence a-week more.

Mr. Juſtice Yates—There muſt be a Hiring for a Year; either in *Law*, or in *expreſs Words*. Theſe *Words* do *not* expreſs it: And here is a Circumſtance ſtated, which deſtroys the Preſumption of its being a general Hiring for a Year; namely, " that the " Servant demanded an additional Sixpence a-week, alledging that " he would otherwiſe quit the Service; and the Maſter complied:"

So that neither of them ſeems at that Time to have thought the Contract originally made between them was binding for a Year.

Mr. JUSTICE ASTON—Though a general Hiring is a Hiring for a Year, yet there muſt be an Obligation upon the Servant "to ſerve for a Year," in order to his gaining a Settlement under ſuch a Hiring. But there is Nothing in the Contract here ſtated, that infers ſuch an Obligation upon this Servant. The ſix Shillings a-week Wages, "*Summer and Winter*," only imports the Agreement to have been "that the Wages ſhould continue always the "ſame, and not be varied according to the Seaſons:" It does not import "that the Contract was to continue during the whole Year." And the Maſter's complying with the Servant's Demand of the additional Sixpence a-week, upon the Servant's declaring "that he would "otherwiſe quit the Service," ſhews how the Contract was then underſtood by Both of them. The Pauper's *Apprehenſion* ſtated in this Order of Seſſions is Nothing *: We can not regard it; eſpecially, as he is ſtated to have alledged "that he would *quit* the Service, "unleſs his Maſter would comply with his Demand."

* *V. ante*, N°. 52, p. 152.

Mr. JUSTICE WILLES concurred in Opinion.

By the COURT unanimouſly,

BOTH ORDERS QUASHED.

V. poſt, N° 206. Rex *v.* Inhabitants of *Bradninch*.

Hilary

Hilary Term

10 Geo. 3. 1770.

No. 203. **Rex *v.* Inhabitants of All Saints in Hereford.**

Monday 29th *January* 1770.

TWO Juſtices removed *Abraham Lewis*, *Ann* his Wife, and their ſeven Children, (naming them and ſpecifying their Ages,) from *Peterchurch* in the County of *Hereford* to *All Saints* in the City of *Hereford*. The Seſſions confirm their Order; ſtating the following Facts—

The ſaid *Abraham Lewis* was born in the Pariſh of the *Hay*, in the County of *Brecon*. Afterwards, the ſaid *Abraham Lewis* and his Father entered into an Agreement in Writing, dated 9th *June* 1740, *(not ſtampt,)* with *Mary Tringham*, in the following Words, *viz.* " Be it remembered, that it is agreed between Mrs. *Mary* " *Tringham*, *Cooper*'s Widow, of the Pariſh of *All Saints* in the " City of *Hereford*, of the one Part; and *Abraham Lewis* the " elder and *Abraham Lewis* the younger, of the Pariſh of *Dorſtone* " in the County of *Hereford*, of the other Part; in manner as fol- " loweth: —Whereas the ſaid *Abraham Lewis* the younger, with " the Conſent of *Abraham Lewis* the elder, *is to be bound Apprentice* " unto the above named Mrs. *Mary Tringham*, for the Term of " *ſeven Years*, The ſaid *Mary Tringham* doth hereby covenant and " agree *to pay* unto the ſaid *Abraham Lewis* the younger the Sum " of twenty-five Shillings, the firſt Year of the Seven; and the " four following Years, the Sum of fifty Shillings a Year; and the " ſixth Year, to pay Him the ſaid *Abraham Lewis* the younger, " the Sum of three Pounds; and, the ſeventh and laſt Year, the " Sum of four Pounds; All of good and lawful Britiſh Money."

And

And in the Margin of the ſaid Agreement, are wrote theſe Words, " The *Boy's Time* to *begin* from the *Date*."

The ſaid *Abraham Lewis* the Pauper, entered into the Service of the ſaid *Mary Tringham*; *ſerved her two Years*; and *received the Money* mentioned in the ſaid Agreement, for ſuch Time; then left his Miſtreſs; No *Indentures* of Apprenticeſhip having been *executed* purſuant to ſuch Agreement; and has, ſince, gained no Settlement.

This Court [the Seſſions] is of Opinion, " ſuch Service *gained* a " Settlement in the ſaid Pariſh of *All Saints*;" and doth confirm the ſaid Order: And the ſame is hereby confirmed.

Mr. *Griffith Price* moved, on *Saturday* 25th *November* 1769, to quaſh both theſe Orders; and obtained a Rule to ſhew Cauſe. He denied that the Pauper gained any Settlement in the Pariſh of *All Saints*. He could not be conſidered as an *Apprentice* to Mrs. *Tringham* becauſe *no Indenture* of Apprenticeſhip was ever *executed:* nor could the *Agreement* be eſteemed to * ſupply the *want* of an Indenture; as it was *not ſtampt*.

* *V.* 31 *G.* 2. *c.* 11. § 1.

Mr. *Kenyon* now ſhewed Cauſe. He ſaid, It was not neceſſary to conſider the Pauper in the Light of an *Apprentice:* He might be conſidered as a *Servant*. Every thing here ſtated was *Service:* Nothing was to be learned. And he was paid Wages by his Miſtreſs. He was hired for ſeven Years; and ſerved two of them; and received the Money for that Time, according to the Agreement.

But Mr. *Price* and his Co-Adjutor Mr. *Poole* replied, that the Service here ſtated was manifeſtly under an apprehended *Apprenticeſhip*; and was not nor can be taken in the Light of a Hiring for a Year, and Service for a Year under ſuch Hiring as a common Servant: And the Binding as an Apprentice can't be converted into the Hiring as an ordinary Servant. They cited the Caſe of † *Whitechurch Canonicorum*, as in point. The only Difference between the two Caſes is, that that Pauper was 22 years of Age; *This*, an Infant.

† *V. ante*, No. 173. pa. 540.

Lord Mansfield was gone.

Mr. Juſtice Aſton was in the Court of *Chancery*.

Mr. Juſtice Yates—An *Apprenticeſhip* was certainly the Thing in view, in the preſent Caſe: and there was no Indenture ever executed, nor was the Agreement ſtampt. In the Caſe of a *Servant*, there muſt be a *Hiring* for a Year, as well as a Service. But this Pauper was an *Infant*; and therefore could not hire himſelf: And his Father's Agreement could not bind his Infant Son as a Servant; though his Infancy would be no Obſtacle to his being bound as an *Apprentice*. Such a Conſtruction as has been attempted, would evade

* *V.* 8 *Ann. c.* 9. § 32, & 39.

evade the * *Stamp-Act*. He could not gain a Settlement under the Service here ſtated.

Mr. JUSTICE WILLES was of the ſame Opinion. This could be no Contract by way of a Hiring for a Year. The *Infant* could not contract to hire Himſelf for a Year. This Caſe is very like that of † *Whitechurch Canonicorum*, where the Pauper was adjudged to have gained *no* Settlement, either as an Apprentice, or as a hired Servant.

† *Ante*, No. 173.

BOTH ORDERS QUASHED.

No. 204.

Rex *v.* Inhabitants of Llanrhydd.

Monday 12th *Feb.* 1770.

TWO Juſtices of Peace for the County of *Denbigh* removed *Mary Evans*, and her Daughter and three Sons (naming them, and ſpecifying their reſpective Ages,) from *Llanrhydd* to *Denbigh*. *Denbigh* appealed to the Seſſions. The Seſſions quaſhed the Order of the two Juſtices; ſtating the following Caſe——

Special Caſe ſtated by the General Quarter Seſſions of the Peace holden in and for the County of *Denbigh* on the 4th *April* 1769, upon the Appeal of the Inhabitants of the Pariſh of *Denbigh*, from an Order of two Juſtices (Mr. *Yale* and Mr. *Price*) made on 11th *January* preceding, for removing the Paupers from *Llanrhydd* to *Denbigh*; which Order the Seſſions thereupon quaſhed; and afterwards add the following Words—

AND WHEREAS the ſaid Inhabitants of the Pariſh of *Llanrhydd*, not being ſatisfied with the Opinion of this Court, did therefore move, by their Attorney, to have the Facts found ſpecially; ACCORDINGLY, the Caſe was agreed by the Court and Attornies, to be as follows—

That *John Myddleton* Eſq; and *John Jones*, Clerk, *removed* the above Paupers, *by an Order*, under their Hands and Seals, dated the the 28th day of *May* 1768, from the ſaid Pariſh of *Llanrhydd* to RUTHIN; and the ſame Paupers were accordingly *delivered to the Officers of* RUTHIN; who maintained them for a While, and for ſome Time after at the joint Expence of both Pariſhes: And *Notice* of APPEAL *to the* SAID *Order* being ſerved on the Officers of *Llanrhydd*, by the Officers of *Ruthin*, on the Morning of the Quarter-Seſſions, *previous to the filing* of the ſaid Appeal, the *Officers of Llanrhydd* CONSENTED "*to take the Paupers back* to their Cuſtody, WITHOUT "giving

" giving the Pariſhioners of RUTHIN the Trouble of appealing " againſt ſuch Order." And thereupon, the ſaid Pariſhioners of *Llanrhydd removed* the ſaid Paupers, by Order under the Hands and Seals of *John Yale* and *David Price* Clerks, dated the 11th Day of *January* 1769, from the ſaid Pariſh of *Llanrhydd* to the Pariſh of *Denbigh* in the ſaid County; who appealed thereto; and upon ſuch Appeal, the Settlement of the ſaid Paupers was *proved* to be at DENBIGH: But it appearing in Evidence on the Behalf of the Pariſh of " *Denbigh*, " That the ſaid Order of *John Myddleton* and *John* " *Jones*, removing them to *Ruthin* as aforeſaid, had NOT *been ap-* " *pealed againſt*," The COURT were of Opinion " That the ſaid " Order of Removal fron *Llanrhydd* to *Denbigh ought to be quaſhed*;" and *was quaſhed* accordingly.

Mr. *Aſhurſt* had moved to quaſh this Order of Seſſions; and obtained a Rule to ſhew Cauſe. His Objection to the Order of Seſſions was, That though the *Principle* upon which they grounded their Opinion is in general right, * namely, " that an Order of Re- " moval ſubmitted to and *not appealed from*, is CONCLUSIVE *upon* " *the non-appealing Pariſh*, as againſt all the World;" yet this general Rule is to be underſtood to relate only to a *ſubſiſting* Order, but not to a *deſerted* one: and therefore the Seſſions have made a great Miſtake in *applying* this general Principle to the particular Caſe of the preſent Order (made by Mr. *Myddleton* and Mr. *Jones*) for removing the Paupers from *Llanrhydd* to *Ruthin*; which, being found to be a wrong one, was by *Conſent* of both Parties concerned in it, ABANDONED and DESERTED, and the Paupers taken back again by the Pariſh in whoſe Favour it was made; and was conſequently at an End, and muſt be conſidered as if it *never had exiſted*. So that, upon the whole Circumſtances ſtated, *Ruthin* was *not* concluded by it; although they had not actually purſued the Appeal, of which they had given Notice, and which they were ready to proceed upon, if *Llanrhydd* had not conſented to take back the Paupers.

Mr. *Kenyon* now ſhewed Cauſe, on behalf of the Pariſh of *Denbigh*. He ſaid, it was not in the Power of *private Perſons* to put an End to the Order for removing theſe Paupers to *Ruthin*, whilſt an Appeal was thus going on againſt it. The Order has removed them to *Ruthin*. *Ruthin* has not appealed. Conſequently

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* The general Principle abovementioned may be ſeen diſcuſſed in ſeveral of the preceding Caſes; *viz.* N° 60. p. 168. N° 67. p. 192, 193. N° 96. p. 276, 277, 278. N° 176. p. 551, 552, 553.

Ruthin is concluded, as againſt all other Pariſhes, to diſpute their belonging to *Ruthin*.

LORD MANSFIELD—That Order was made in favour of *Llanrhydd:* and *Llanrhydd* gave it up, and conſented to take the Paupers back, without giving *Ruthin* the Trouble of appealing againſt it. May not a Party give up a Judgment intended for his own benefit?

THE COURT being of Opinion againſt Mr. *Kenyon*, on this Point,

HE then objected to the *Original* Order made for the laſt removal from *Llanhrydd* to *Denbigh*; for that the County is only mentioned in the *Margin*, and not in the *Body* of it: and he cited 2 Ld. *Raymond* 1304. *Mich.* 8 *Ann.* anonymus; where an Order of two Juſtices was quaſhed upon this Exception, "*Southampton* was in "the Margin; but it was ſaid in the Body of the Order, to be "made by *A.* and *B.* two Juſtices *de Comitatu prædicto:* So it does "not appear that the two Juſtices were of the County; and it "ſhall *not* refer to the Margin." Which the Court agreed; and ſaid "that *prædicto*, in *Orders* or *Indictments don't refer* to the County "mentioned in the Margin; though it does in *Declarations*." And therefore the Order was quaſhed.

LORD MANSFIELD--That Caſe goes upon the Notion of an Order's being like an Indictment. But an Order of Removal is *not* like an Indictment.

Mr. JUSTICE ASTON ſaid, He thought that Caſe in Lord *Raymond* had been over-ruled: And he had ſome Notion that it was ſo in the Caſe of the *King* againſt *Lloyd* *:

* The Opinions and *Dicta* and even Determinations upon this Point have varied. *Vide Rex* v. *Foſſet p.* 12 *W.* 3. *B. R.* cited *ante*, *p.* 43. and See the Caſe of *Sheringham*, *Trin.* 8 *G.* cited *ante*, *p.* 40. and of *Underthwaite*, in *Hilary* 9 *G.* cited in the ſame 40th *page*. There was a Caſe of *Rex* v. *Auſtin*, in *Mich.* 11 *G.* 1724, upon an Order to ſuppreſs an Alehouſe, where the Queſtion was diſcuſſed, though, perhaps not determined: It is likewiſe cited in the foregoing Pages 40 and 43, and may be ſeen reported in a Book commonly called 8*th Modern*, *p.* 309. 310. In *Mich.* 1725, 12 *G.* in a Caſe of *Rex* v. Inhabitants of *Addlethorpe*, upon an Order of Removal, the Objection prevailed; and the Order was quaſhed. In *Hilary* 13 *G.* 1726, *Rex v.* Inhabitants of *Fiſherton*

Fiſherton de la Mere, upon an order of Removal, the ſame Objection was over-ruled. In *Hilary* 1730, 4 *G.* 2. upon an Order of Removal, The County being in the Margin only was holden inſufficient; and the Court quaſhed the Order, citing the before-mentioned Caſe of *Rex* v. *Auſtin*. In *Trinity* Term 1732, 5 & 6 *G.* 2. *Rex* v. *Holland*, upon an Order of Baſtardy, *Wigorn* being in the Margin was holden ſufficient. And in *Eaſter* Term 1733, 6 *G.* 2. *Rex* v. *Johnſon*, upon an Order of Baſtardy, an Objection of Serjeant *Draper*'s, "that the County was only in the Margin, but "not in the Body of it," was over-ruled. However, it is now ſettled "that a Reference to the Margin (if it be a "clear and plain Reference) is ſufficient in an *Order*; though "*not* ſo, in an *Indictment*." *V. ante*, N° 12. *p.* 43. N° 45. *p.* 139. and N° 69. *p.* 200, 201.

ORDER of SESSIONS QUASHED:
ORIGINAL ORDER AFFIRMED.

Rex *v.* Inhabitants of Merevall. No 205.

TWO Juſtices removed *Rebeccah Clark*, Single Woman, and *John* her Child, upwards of five Months old, from *Birmingham* in *Warwickſhire* to *Merevall* in *Leiceſterſhire*. *Monday* 12th *Feb.* 1770.

The Seſſions confirm the Order of the two Juſtices; It appearing, that the Pauper was hired for, and ſerved a Year in *that Part* of the Pariſh of *Merevall* as is within the County of *Leiceſter*; and that there was an Appointment of an Overſeer of the Poor of *Merevall* by two Juſtices of the County of *Warwick*; to *which Officer* the Pauper was *delivered:* But that there is not now, nor ever was any Overſeer of the Poor appointed for *that Part* of *Merevall* that lies within the County of *Leiceſter*; although there are ſeveral Houſes and Subſtantial Inhabitants in that Part of the Pariſh of *Merevall* that lies in the County of *Leiceſter* aforeſaid. And that the *ſame* Perſon who was *Overſeer*, was alſo *Churchwarden* of the ſaid Pariſh of *Merevall:* and that ſuch Officer has *uſually acted* in the Maintenance of the Poor, *throughout* the WHOLE Pariſh.

Mr. *Wheler* had moved, on *Saturday* 27th *January* 1770, to quaſh both theſe Orders. His Objection was, That the Appointment of an Overſeer by the Juſtices for the County of *Warwick* could not

affect *that Part* of the Pariſh of *Merevall* which lies in the County *Leiceſter:* For, by 43 *Eliz. c.* 2. § 9. "If any Pariſh extends into "more Counties than one, the Juſtices of every County ſhall deal "only in *ſo much* of the Pariſh as lies within their Liberties; and "every One *within their Limits*; to execute the Ordinances con-"cerning the Nomination of Overſeers, &c." Therefore that Part of this Pariſh of *Merevall* which lies in *Leiceſterſhire* muſt be conſidered as *extraparochial*, until Overſeers are properly appointed for it: And no Removal can be made to it, *until* Overſeers or an Overſeer at leaſt ſhall be ſo appointed.

Mr. *Green*, ſupported, by Mr. *Dunning* (Solicitor General,) now ſhewed Cauſe. They ſaid, The *Churchwardens* are ſufficient Officers in this Reſpect: They are *Overſeers*, to this Purpoſe.

THE COURT, being clearly of Opinion with them, diſcharged the Rule obtained by Mr. *Wheler*.

BOTH ORDERS AFFIRMED.

No. 206.

Rex *v.* Inhabitants of Bradninch.

Monday 12th *Feb.* 1770.

TWO Juſtices removed *William Davy*, *Mary* his Wife, and their three Children, (ſpecifying their Names and Ages,) from *Brandninch* to *Shobrooke*; Both in the County of *Devon*. Their Order was confirmed by the Seſſions, on a Caſe ſtated.

THE CASE ſtated upon the Order of Seſſions was this—— The Pauper came to one *Samuel Ruddall*, in the Pariſh of *Crediton*; and agreed to live with him *by the Week*, at *two Shillings* and *Sixpence per Week*; and to *part at a Fortnight's or Month's Notice*. The Pauper being aſked "how long he intended to live with Mr. *Rud-*"*dall*," replied, "He did not know; but, *as long as they liked*." And accordingly, the Pauper lived with Mr. *Ruddal* for eight Years, under that Agreement; the Pauper and Maſter being both at Liberty to part from Each Other on a Fortnight or Month's Notice. The Pauper received his Wages of two Shillings and Sixpence *per* Week, ſometimes at the End of the Week, ſometimes at the End of a Fortnight, and ſometimes longer, as he wanted Money. This Court [of Seſſions] being of Opinion "that the Pauper *gained* a Settlement "*by ſuch Service* in the ſaid Pariſh of *Crediton*," doth therefore vacate the ſaid Order: And the ſame is hereby vacated accordingly.

Mr.

Mr. *Mansfield* had moved, on *Saturday* 27th *January* 1770, to quaſh this Order of Seſſions; objecting "that here was *no Hiring* "*for a Year*:" And he had a Rule to ſhew Cauſe.

Mr *Heath* now ſhewed Cauſe; and endeavoured to maintain "that this was a Hiring *by the Year*." Every *general* Hiring is a Hiring by the Year: And ſo the Law ſhall conſtrue it; For, that Retainer is according to Law. *Co. Litt.* 42. *b.* lays this down expreſſly. And this is a Sort of general Hiring. It can't be taken as a Hiring by the *Week only*; becauſe they were not to part but at a *Fortnight*'s or a *Month*'s Notice: which is inconſiſtent with the Idea of a Hiring only by the *Week*. But,

THE COURT, without hearing the Counſel on the other Side, over-ruled Mr. *Heath*'s Argument. And

LORD MANSFIELD obſerved, that this Pauper was under *no Obligation to ſerve for a Year*: whereas, in order to gain a Settlement, there muſt be an *Obligation* upon the Pauper, to ſerve for a Year.

ORDER of SESSIONS QUASHED:
ORIGINAL ORDER AFFIRMED.

V. ante, N° 98. *p.* 280. and N° 165. *p.* 113. and N° 202. *p.* 653.

Eaſter Term

10 Geo. 3. 1770.

No Settlement-Caſe was determined within this Term.

Trinity

Trinity Term

10 Geo. 3. 1770.

Nº 207. **Rex *v.* Inhabitants of Kirkby Stephen.**

Friday 15th *June* 1770.

TWO Juſtices removed *William Blenharn Greer*, *Jane* his Wife, and their Children *Jane*, *Robert*, *Thomas*, *Elizabeth*, *Mary*, and *Catherine*, from the *Townſhip* of *Kirkby Stephen* in the County of *Weſtmoreland* to the *Townſhip* of *Wharton* in the ſame County. Upon an Appeal from their Order, The Seſſions quaſh it; ſubject to the Opinion of this Court, upon a Caſe ſtated on the Order of Seſſions. *viz.*

That the ſaid Pariſh of *Kirkby Stephen*, conſiſts of *ten different Townſhips*, who maintain their Poor reſpectively and have ſeparate Overſeers: Of which, the ſaid Townſhip of *Kirkby Stephen*, and the ſaid Townſhip of *Wharton*, are Two.

That the Pauper was *originally ſettled* in the ſaid Townſhip of *Wharton*, and rented a Tenement of 22 *l. per Annum* in the ſaid *Townſhip* of WHARTON for four Years, and lived upon it for three Years and upwards; and in the fourth Year went to the ſaid *Townſhip* of KIRKBY STEPHEN, to aſſiſt his Siſter as a Shopkeeper; and LODGED there with Her *upwards of* 40 *Days*; during which Time, He went daily to occupy and manage his ſaid Farm in *Wharton*.

That he afterwards went to *Newport* in the County of *Salop*: where he married, and had five Children; and being likely to become chargeable there, *was removed*, by the Order of two Juſtices of of the ſaid County of *Salop*.

That ſome Time in *February* 1768, the Overſeers of the Poor of the ſaid Pariſh of *Newport* brought the ſaid Pauper, his Wife and Children with the ſaid Order, to *Thomas Petty* then *Overſeer* of the Poor of the ſaid *Townſhip* of *Kirkby Stephen*; and delivered the

ſaid Order to Him: who, having read the ſaid Order, ſaid, "The "Pauper did *not belong* to *Kirkby Stephen*, but to *Wharton*; and "that he had rather the Pauper belonged to *Kirkby Stephen* than to "*Wharton*, as He (the Overſeer) had a better Eſtate in *Wharton* "than in *Kirkby Stephen*;" and then went away, leaving the Order of Removal with the Overſeer of *Newport* and the Pauper.

A COPY of the Order of Removal from *Newport* was offered to be given in Evidence; *Notice* having been given to the Overſeers of the Poor of the ſaid *Townſhip* of *Kirkby Stephen* and to the Pauper, "*to produce the Original* Order," and the Overſeers called on for that Purpoſe; but the *Original* Order *was not produced*: on which, the Court *admitted* in Evidence the COPY written by the Pauper and proved by him to be a *true* Copy. Which Copy is in the Words and Figures following—

"*Shropſhire—to wit*—To the Churchwardens and Overſeers of "the Poor of the Pariſh of *Newport* in the ſaid County, and "the Churchwardens and Overſeers of the Poor of the *Pariſh* "of *Kirkby Stephen* in the County of *Weſtmoreland*, and to Each "and Everyof them.

"Upon the Complaint of the Churchwardens and Overſeers of the "Pariſh of *Newport* aforeſaid, in the ſaid County of *Salop*, unto Us "whoſe Names are hereunto ſet and Seals affixed, being Two of "of his Majeſty's Juſtices of the Peace in and for the ſaid County "of *Salop*, and one of Us of the *Quorum*, That *William Greer*, "*Jane* his Wife, and their five Children, *to wit*, *Jane* aged 11 "Years, *Robert* aged 9 Years, *Thomas* aged 7 Years, (they not gained "any Settlement ſince their Birth,) and *Elizabeth* and *Mary*, Both "Infants under the Age of ſeven Years, have come to inhabit "in the ſaid Pariſh of *Newport*, not having gained a legal Settle- "ment there, nor produced any Certificate owning themſelves to "be ſettled elſewhere; and that the ſaid *William Greer*, *Jane* his "Wife, and their ſaid Children are likely to be chargeable "to the ſaid Pariſh of *Newport*; We the ſaid Juſtices, upon "due Proof made thereof, as well upon the Examination of "the ſaid *William Greer* upon Oath as otherwiſe, and likewiſe upon "due Conſideration had of the Premiſſes, DO ADJUDGE the ſame "to be TRUE: And we do likewiſe adjudge that the lawful Set- "tlement of them the ſaid *William Greer*, *Jane* his Wife, and "their ſaid Children is in the ſaid PARISH of *Kirkby Stephen*. We "do therefore require you the ſaid Churchwardens and Overſeers "of the Poor of the ſaid Pariſh of *Newport* or ſome or one of You,

"to

" to convey the ſaid *William Greer*, *Jane* his Wife, and their ſaid " Children, from and out of the ſaid Pariſh of *Newport* to the ſaid " PARISH of *Kirkby Stephen*; and them to deliver to the Church- " wardens and Overſeers of the Poor there, or to ſome or One of " them, together with this our Order, or a true Copy thereof. And " we do hereby require You the ſaid Churchwardens and Overſeers " of the Poor of the ſaid PARISH of *Kirkby Stephen* to receive and " povide for them, as Inhabitants of your PARISH. Given under " our Hands and Seals, the ſixth Day of *January* in the Year 1768.

" *Edw. Cludde*,
" *Edw. Pemberton.*"

" Mr. *Fothergill*, This is a *true Copy* of the " Order had at *Wellington* in *Shropſhire.*"

That about a Week after the Time he was brought to *Kirkby Stephen* as aforeſaid, the Pauper *William Blenharn Greer* went to *Wharton*, and delivered the original Order of Removal from *Newport* to the PARISH *of Kirkby Stephen*, to *John Hartwell*, who, he had been informed, was Overſeer of the Poor of *Wharton*; who, having read the Order, ſaid " He would do nothing in it, till they " had a Meeting;" and returned the Order to the Pauper.

That ſome Time afterward, the Pauper was applied to, by *Robert Fothergill* an Inhabitant of *Wharton*, for a Copy of the Order of Removal: which the Pauper wrote, and delivered to Him; and which was the Copy produced and admitted in Evidence.

That the Pauper remained in *Kirkby Stephen*, and was maintained by his Siſter in the *Townſhip of Kirkby Stephen* for near a Year and a Half; when, his Siſter dying, he aſked Relief of the Overſeers of the Poor of the *Townſhip of Kirkby Stephen*.

It *did not* appear any APPEAL was made againſt the Order of Removal from *Newport*: But the *Pauper* had that Order from the Time that *Petty* left it; and was carried, together with it, by the Overſeers of the Poor of the Townſhip of *Kirkby Stephen*, before two of his Majeſty's Juſtices of the Peace for the ſaid County of *Weſtmoreland*; where the Order was either left with the ſaid Juſtices, or delivered to *Matthew Thompſon* one of the Overſeers of the Poor of the Townſhip of *Kirkby Stephen*; the Pauper not having ſince ſeen it. Upon which, this Court [the Seſſions] being of Opinion, " That the " ſaid laſt-mentioned Order for the Removal of the Pauper and his " Family from the *Townſhip* of *Kirkby Stephen* to the *Townſhip* of " *Wharton*, be quaſhed and made void," the ſame is hereby quaſhed and

and made void accordingly; ſubject nevertheleſs to the Opinion of his Majeſty's Court of King's Bench, upon the Caſe above ſtated.

Mr. *Wallace* had moved, on *Saturday* 12th *May* 1770, to quaſh this Order of Seſſions; and had obtained a Rule to ſhew Cauſe.

His Reaſons for quaſhing it, were, That the Pauper's legal Settlement was in the Townſhip of *Wharton*, where his Tenement and Farm lay: His *Domicil* was there, and not in the Townſhip of *Kirkby Stephen*. And the Townſhip of *Kirkby Stephen* are *not precluded* by any Thing here ſtated, from diſputing the Pauper's Settlement, with *another Townſhip* in the *ſame Pariſh*. The Order of the two Juſtices removes from *Newport* to the PARISH of *Kirkby Stephen*: And the *Pariſh*, 'tis true, have not appealed againſt it. But the Pariſh at large conſiſts of *ſeveral Townſhips*: Which ſeveral Townſhips are not affected, as *between One and another of theſe particular Townſhips*, by the non-appealing of the Pariſh at large. It may be too late to diſpute the Settlement of the Paupers being within the *Pariſh*: But there can be no Pretence to ſay, that their Settlement being acknowledged to be within the Pariſh at large, ſhould fix it in One of its *Townſhips* rather than Another; or preclude One of theſe Townſhips from diſputing it with *another of them*. This is conſiſtent with a Conceſſion "that the *Pariſh* to which Paupers are "removed, are bound by not appealing."

Mr. *Dunning* and Mr. *Wilſon* now ſhewed Cauſe, on behalf of the Townſhip of *Wharton*. They agreed, that the legal Settlement was in the Townſhip of *Kirkby Stephen*; where the Pauper lodged, ſlept, and reſided above forty Days; not as a caſual Reſidence, but as a complete Change of Reſidence, and from whence he was irremoveable during all the Time he remained there. This was his Domicil: He had left *Wharton*, and changed his Domicil which once was there. But, be that as it may, They inſiſted, that the Townſhip of *Kirkby Stephen* was *bound and concluded* by the Order of Removal from *Newport* to *Kirkby Stephen*, unappealed from. This original Order calls *Kirkby Stephen* "a *Pariſh*," though it is only a Townſhip: But that Miſtake will not vary the Law. They ought to have appealed: And upon an Appeal, they might have availed themſelves of that Miſtake, or of the Merits, if they had any. But not having appealed they are concluded, as againſt *every* Body, as againſt all the World *. And they cited *Viner*'s *Abridgment*, Title *Removal*, pa. 468. Letter H. pl. 2. as in Point. There the Removal was to the Pariſh of *Stepney*; who did not appeal: And *Spittlefields*, a Hamlet

* *V. ante*, p. 19.

Hamlet of *Stepney* was bound. And it is there ſaid, " that Juſtices " of the Peace are not obliged to take Notice of the Diviſions of " Pariſhes."

Mr. *Wallace* and Mr. *Morton*, *contra*, on behalf of the Townſhip of *Kirkby Stephen*, urged, That the Paupers were never received by the Townſhip of *Kirkby Stephen*; That the legal Settlement was clearly in *Wharton*; That the merely Lodging in the Townſhip of *Kirkby Stephen* was a caſual Reſidence, and could give no Settlement; and that the Townſhip of *Kirkby Stephen* were not concluded by the not appealing from the original Order of Removal from *Newport*. They ſaid, that if they had appealed, the Determination muſt have been againſt them: For, the Order removed the Paupers to the *Pariſh* of *Kirkby Stephen*; and it is agreed on all Hands, that their legal Settlement was within the *Pariſh*; and it is agreed, that the Juſtices are not bound to take Notice of the Diviſions of Pariſhes; and the Townſhip of *Wharton* is ſtated and agreed to be a Diviſion of this Pariſh and within it. Conſequently, the Seſſions muſt have determined againſt Us, upon an Appeal.

Mr JUSTICE BLACKSTONE thought that this Caſe falls within the Rule which is mentioned in the Caſe of *Thackham* and *Findon*, in 2 *Salk.* 489. pl. 52. " that an Order of two Juſtices, not appealed " from, binds the Pariſh upon which it is made, * till a new Settle- " ment is gained." And he recited the Caſe of *Spittlefields* and *Bromley*, P. 1 *Ann. B. R.* mentioned in *Viner*, Title *Removal*, pa. 468. pl. 5. Where a poor Perſon having been ſent to the *Pariſh* of *Stepney*, who did not appeal, Exception was taken, " that the remo- " val ought to have been to the HAMLET *of Spittlefields:* For *Step-* " *ney* is divided into *four Townſhips*, and the Poor have been remo- " ved *from one Townſhip to another* in the *ſame Pariſh*; and the " † Statute takes Notice of Townſhips, as well as Pariſhes; " and *Spittlefields* is a *Hamlet* of *Stepney*." But the Court held, " that if a Perſon is removed to a wrong Place, *that Place* ought to " appeal: And ſo *Stepney* ought to have done, if it were a wrong " Place; or elſe the Matter will be concluſive upon them. But this " is a Matter here out of the Record. Juſtices of the Peace are *not* " *obliged to take Notice* of the Diviſions of Pariſhes into Hamlets and " Townſhips which maintain their own Poor ſeverally and diſtinct- " ly. And *Stepney* here, upon an Appeal, might have ſhewn that " the Perſon did belong to the Hamlet of *Spittlefields:* which might " have been a reaſonable Cauſe to diſcharge the Order. Two Ham- " lets within a Pariſh are the ſame as two Pariſhes: Yet Church- " wardens

* See alſo, *ante*, No. 96. pa. 277.

† *V.* 13 & 14 *C.* 2. *c.* 12. § 21.

" wardens are Overſeers of the Poor of the whole Pariſh, though ſo " divided; and have a Superintendency over the whole Hamlets and " Townſhips."

LORD MANSFIELD—The Original Order, made for the Removal from *Newport* to the Pariſh of *Kirkby Stephen*, muſt mean the Townſhip of *Kirkby Stephen:* The Townſhip was *as* a Pariſh, for this Purpoſe, of a Removal to it; the Poor within the Pariſh not being maintained by the *whole* Pariſh, but by the particular Townſhips to which they *reſpectively* belong. The *Townſhip* of *Kirkby Stephen* ought, in this Caſe, to have appealed: They could not get rid of this Order, but by appealing. And if they had appealed, the Truth might have appeared: And when the Facts had appeared to the Juſtices, upon the whole Truth being diſcloſed, the Paupers might, in the End of the Inquiry, have been ſent to *Wharton*.

Per Cur.

RULE DISCHARGED:
ORDER of SESSIONS * AFFIRMED.

* *N. B.* I have ſeen a printed Report of this Caſe, which ſays " that the ORDER of SESSIONS was QUASHED." But I aſſure the Gentleman who publiſhed it, " that it was AFFIRM- " ED:" I have examined the Rule-Book, and find it ſo.

Rex *v.* Inhabitants of Newſtead. No. 208.

MR. *Wallace* moved on *Thurſday* 10th *May* 1770, for a Rule upon the Proſecutor, to ſhew Cauſe why the Order of Seſſions made for reverſing the Original Order of two Juſtices made for the Removal of *Frances Downey*, Spinſter, from the Townſhip of *Newſtead* in the Pariſh of *Balmbrough* in the County of *Northumberland*, to the Pariſh of *Holy Iſland* in the County of *Durham*, ſhould not be quaſhed; and alſo why the ſaid Original Order ſhould not be affirmed. *Friday* 15th *June* 1770.

The Caſe was ſpecially ſtated, upon the Seſſions-Order. *Frances Downey*, being a Single Woman and unmarried, hired Herſelf *at Whitſuntide* 1767, to *Thomas Hill* an Inhabitant and Houſekeeper in the ſaid Pariſh of HOLY ISLAND *to ſerve Him for a* YEAR from the

ſaid Whitſuntide to the *Whitſuntide* following, at certain Wages. The ſaid *Frances Downey* entered upon the ſaid Service, at *Whitſuntide* 1767, and *continued therein* TILL WHITSUNTIDE 1768, accordingly: When She *received a Year's Wages* from her ſaid Maſter, for ſuch Service.

It ſtates, That it hath been USUAL *in this Country*, to hire Servants *from* WHITSUNTIDE *to* WHITSUNTIDE: And that an hiring and Service *from* WHITSUNTIDE *to* WHITSUNTIDE has *always*, by the contracting Parties, been DEEMED *a Year's Service*; and agreeable thereto, the Maſter hath *always paid* the Servant a *full* Year's Wages for ſuch Service, *without* any Diminution thereof or Addition thereto, and *without* making any Diſtinction or Difference whether the Space of Time between the one *Whitſuntide* and the other conſiſted of more or leſs than 365 Days.

Some of his Majeſty's Juſtices of the Peace at this Seſſions are of Opinion, "that a general Hiring and Service from one *Whitſuntide* "to another, without mentioning ſuch Hiring and Service to be *for* "*a Year*, would make a *good* Settlement."

Nevertheleſs, it appearing to this Court [of Seſſions] in *this* Caſe, "that the Space of Time between *Whitſuntide* 1767 and *Whitſuntide* "1768, conſiſted of LESS than 365 Days; and was NOT *a com-*"*plete Year*."—

It is therefore ORDERED, by the ſaid Court of Seſſions, That the ſaid Order of Removal be REVERSED.

Mr. *Wallace* alledged this to be a ſufficient Hiring and Service for gaining a Settlement; and obtained a

RULE *to ſhew Cauſe why this Order of Seſſions ſhould not be quaſhed; and the Original Order affirmed.*

Mr. *Dunning* now ſhewed Cauſe; and urged that no Settlement was gained in *Holy Iſland*, by this Hiring and Service, which were Both of them incomplete; Both being for *leſs* than a Year, and ſhort of 365 Days: Whereas the Hiring muſt always be for a complete Year, and can't be diſpenſed with; and the Service ought to be ſo too. Indeed the Court have ſometimes relaxed a little, as to the Service; but never, as to the Hiring. To prove which, he cited the Caſes of * *Frencham* and *Pepperharrow*. *P.* 1 *G.* 1. † *Comb* and *Weſt-Woodhey*. *H.* 5 *G.* 1. *Rex v.* Inhabitants of || *South Cerney*. *P.* 5 *G.* 2. [See alſo, *ante*, N° 55. *Rex v.* Inhabitants of *Newton*.] But,

* *V. Foley's* Poor Laws, pa. 144 and Seſſions Caſes, Ed. 1750. Vol. 1 pa. 7. and 1 Sir *J. S.* 83.

† *V. ante*, pa. 160, in Margine.

|| *V. ante*, pa. 158.

THE COURT, conſiſting of LORD MANSFIELD, Mr. JUSTICE WILLES, and Mr. JUSTICE BLACKSTONE, (for LORD COMMISSIONER ASTON was engaged in the Court of Chancery,) were unanimous "that the Pauper *gained* a Settlement in *Holy Iſland*, un-"der this Hiring and Service." This is ſtated to be the *uſual* Way of hiring Servants in this County, and ſuch Service *always deemed* to be a Year's Service. There are many of the Clergy, in *Durham*: They compute from eccleſiaſtical Days. I is ſtated as a Hiring "to ſerve *for a Year*," though it is indeed added, "from *Whitſun-*"*tide* to *Whitſuntide*." Pariſh-officers are, by 43 *Eliz.* to be appointed in *Eaſter*-week, or within one Month after *Eaſter*, (which is a moveable Feaſt:) Yet they are conſidered as executing the Office a whole Year, though it may fall ſhort of 365 Days. There is no Caſe that proves the abſolute Neceſſity that the Hiring ſhould be for exactly 365 Days.

ORDER of SESSIONS QUASHED:
ORIGINAL ORDER AFFIRMED.

Rex *v.* Inhabitants of St. Agnes. Nº 209.

MR. *Dunning* moved, on *Saturday* 23d *June* 1770, to quaſh an Order of Seſſions which diſcharged an Order of two Juſtices made for the Removal of *Mary Nicholls* and her ſix Sons and Daughters, (ſpecifying their Names and Ages), from St. *Agnes* to *Redruth*, Both in *Cornwall*. *Tueſday* 3d *July* 1770.

The ſpecial Caſe ſtated on the Order of Seſſions was this—

William Nicholls, the late Husband and Father of the Paupers, when two Years of Age only, went with his Father (who was at that Time ſettled at *Redruth*) into the Pariſh of St. *Agnes*: And when He was about 15 or 16 Years of Age, the Father made a Contract with one Mr. *Nankivell* (who then lived in the adjoining Pariſh of * *Peranzabulo*) for his Son to work at the ſaid Mr. *Nankivell*'s Stamps ſituate in the ſaid Pariſh of St. *Agnes*, (which Stamps are Mills wherein ſeveral Labourers, Men and Boys, are employed in cleanſing and manufacturing Tyn), *for one Year*, at the yearly Wages of *L.* 5. In purſuance of which Contract, the ſaid *William Nicholls* ſerved the ſaid Mr. *Nankivell*, at his aforeſaid Stamps, for ſaid

* *Peran* in the *Sandes v.* Sir *Henry Spelman*'s *Villare Anglicum*.

ſaid Year, by working therein daily, *except Holidays and Sundays, according to the Cuſtom of Tinners:* And his Father received his Wages, as he had Occaſion for it. But during the ſaid Year, the ſaid *William Nicholls* eat drank and lodged with his Father in the ſaid Pariſh of St. *Agnes*; ſerving the ſaid Mr. *Nankivell* at his *Stamps* aforeſaid, and in no other Capacity; nor ever became a Part of his Family.

At the Expiration of the firſt Year, a like Bargain was made, for another Year, at Seven Pounds; and a like Service under it; and ſo on for another Year: But during the ſaid *laſt two Years* alſo, ſaid *William Nicholls* ſerved ſaid Mr. *Nankivell* in ſaid *Stamps*, and in no other Capacity; continuing to *eat drink and lodge with his Father*, and never becoming any Part of his *Maſter*'s Family; and having *Holidays and Sundays at his own Command* during the three Years, as is *uſual* for Perſons hired in ſuch Employ.

Upon due Conſideration thereof, This Court [the Seſſions] doth adjudge, that the ſaid Order of Removal be, and the ſame is hereby *diſcharged*. And then they order the Paupers to be reconveyed from *Redruth* to St. *Agnes*, to be there provided for.

Mr. *Dunning* objected, That *William Nicholls* gained *no* Settlement at St. *Agnes*; and obtained a

RULE *to ſhew Cauſe why the Order of Seſſions ſhould not be quaſhed, and the Original Order affirmed.*

Mr. Serjeant *Burland* now ſhewed Cauſe. He contended, that here was a *Hiring for a Year*, without any *Exception:* And the *Service* was according to the *Cuſtom*, and as is *uſual* for Perſons hired in ſuch Employ. It is therefore a complete Hiring and a complete Service in St. *Agnes:* And the Paupers are legally ſettled there. In the Caſe of * *Macclesfield*, the Hiring was *with* an Exception: Here, 'tis *without* any. In the Caſe of † *King*'s *Norton*, the Pauper was holden to be ſettled at *Camden*, though ſhe ſpun only by the Stone.

* *V ante*, No. 146. pa. 458.

† *Ante*, No. 52. pa. 152.

Mr. *Dunning* replied, that this is rather the Caſe of a Journeyman, than of a hired Servant. He was reſident with his *Father:* He was his *own Maſter*, except as to performing the ſtipulated limited Service at the Stamps. He was only to do that *particular* Service: The Maſter had no Right to employ Him in any *other*. And *Sundays and Holidays* were *abſolutely his own*, without any Control from the Maſter. *This* Contract is in Effect the ſame as that in the *Macclef-*

* *Macclesfield* Caſe was. There, the Pauper was to be his own Maſter and at his own Liberty the whole *Sunday* and all the Reſt of the other Days except the eleven Hours: Whereas the Act of 3 & 4 *W. & M. c.* 11. † intends only ſuch Services where the Servant is under the Command and Control of the Maſter during the whole Year. The preſent Caſe is exactly like that Caſe: And in this Caſe, the Exception muſt have been equally underſtood at the Time of the Hiring, though not particularly expreſſed.

* *V. ante*, No 146. pa. 458.

† *V. ante*, pa. 460.

THE WHOLE COURT (which was now full) were unanimous "that *William Nicholls* gained a Settlement in St. *Agnes*."

They held this to be an entire Contract for a Year, without any Exception contained in it: And the Service was according to the *Cuſtom* of the Country. And they made a Diſtinction between the Exception's being *Part of the Original Contract*, and its not being ſo: The Queſtion turns upon this Diſtinction. In the Caſe of *Macclesfield*, it was Part of the Original Contract: Here, it is not ſo. And they mentioned the Caſe of *Biſhop*'s *Hatfield*; which may be ſeen, *ante*, N° 141. pa. 439.

RULE DISCHARGED: And
ORDER of SESSIONS AFFIRMED.

V. poſt, N° 218. *Rex v.* Inhabitants of *Buckland Denham*.

Michaelmas Term

11 Geo. 3. 1770.

No Settlement-Caſe was determined within this Term.

Hilary

Hilary Term

11 Geo. 3. 1771.

No. 210.

Rex *v.* Inhabitants of Lowther.

Tueſday 12th *Feb.* 1771.

TWO Juſtices removed *Catharine Nicholſon*, Single Woman, from *Great Salkeld* in the County of *Cumberland*, to *Lowther* in the County of *Weſtmoreland:* And the Seſſions, upon an Appeal, confirm their Order; ſubject to the Opinion of this Court upon the following Caſe.

Special Caſe ſtated on the Order of Seſſions.

The Pauper, at the Age of 25, HIRED Herſelf as a Servant, with one *William Thompſon* of *Hackthorpe-Hall* in the ſaid Pariſh of *Lowther*, *from Whitſuntide*, as the Pauper believed, about four Years ago, to *Martinmas*; and before the Expiration of that Term, hired Herſelf again to the ſaid *Thompſon*, at *Hackthorpe*, for the ſucceeding Half-year *from the ſaid Martinmas* to the *Whitſuntide following*; and *in purſuance of theſe Hirings*, SERVED the ſaid *William Thompſon*, at *Hackthorpe* aforeſaid in the ſaid Pariſh of *Lowther*, for the *complete Year, viz.* from *Whitſuntide* to *Martinmas*, and from the ſaid *Martinmas* to *Whitſuntide*, without leaving her Service; and received the two Half-years Wages.

That after ſuch Service, the Pauper went upon a Viſit to a Relation, who lived in the Pariſh of *Great Salkeld*; and being likely to become chargeable there, was removed to the Pariſh of *Lowther*, as her laſt legal Settlement; not having gained any ſubſequent One, nor having any other Settlement in the ſaid Pariſh of *Lowther*.

That the *uſual Cuſtom* of hiring Servants in *Cumberland* is from *Half-year* to *Half-year*.

That

That it has been the *invariable Practice* of the Quarter-Seſſions of *Cumberland*, as long as can be remembered, "to adjudge, the "*ſaid Hiring for two ſucceſſive Half-years*, and *Service in purſuance* "*thereof* for one *whole Year* with the *ſame Perſon* and in the *ſame* "*Place*, ſhould be a SETTLEMENT under the ſeveral Acts of Par-"liament made relating to the Settlement of the Poor."

And the Court [of Seſſions] being of Opinion "that the ſaid "*Catharine Nicholſon* gained a Settlement thereby, in the ſaid Pariſh "of *Lowther*," doth order that the ſaid Warrant of Removal be *confirmed:* And the ſame is hereby confirmed accordingly; Subject, nevertheleſs, to the Determination of the Court of *King*'s *Bench* on the aforeſaid State of the Caſe.

Mr. *Davenport* had (on *Monday* next after 15 Days of St. *Hilary* in this Term) moved to quaſh both theſe Orders; as here was *no Hiring for a Year*.

Mr. *Wallace* was to have now ſhewed Cauſe, on behalf of the Pariſh of *Great Salkeld:* But he candidly acknowledged "that the "Orders could not be ſupported; there being no *Hiring for a* "*Year*."

THE RULE was made abſolute for quaſhing the Original Order of Removal to *Lowther*, and alſo the Order of Seſſions made in Confirmation of it.

BOTH ORDERS QUASHED.

V. ante, N° 55. N° 165. & N° 209.

Rex *v.* Inhabitants of Madington.

No. 211.

TWO Juſtices removed *Robert Carter* from *Madington* in *Wiltſhire*, to the Pariſh of *Wilsford* and *Lake* in the ſame County. The Seſſions upon an Appeal, quaſh their Order; ſtating the Caſe ſpecially.

Tueſday 12th *Febr.* 1771.

The Special Caſe ſtated upon the Order of Seſſions, was this—

The ſaid *Robert Carter*, the Pauper, being before ſettled at *Madington*, was about eight Years ago hired, three Weeks before *Michaelmas*, to *Richard Chandler* of *Wilsford* and *Lake*, to ſerve Him as a Carter, *for a Year*, *from Michaelmas* then next. About *three Days after Michaelmas*, he entered on his Service with *Chandler*, and continued in the ſame *'till about three Weeks before the next Michaelmas*;

chaelmas; when, having been *kicked by one of his Maſter's Horſes*, he *went home to his Friends* at *Shrewton*, about five Miles diſtant, *without his Maſter's Knowledge or aſking his Leave*, to *cure his Leg*; *and continued there during the Remainder of the Year*, and *never returned* to his Maſter, except for his Wages, ſome ſhort Time after *Michaelmas*; when he was paid the Whole, except ſix Shillings, which the Maſter *deducted* on account of the ſaid Abſence; which the Pauper conſented to. This Court [the Seſſions] doth therefore *quaſh* the ſaid Order.

Mr. *Head* had moved (on *Saturday* next after the Octave of *St. Hilary*, in this Term,) to quaſh this Order of Seſſions; and had a Rule to ſhew Cauſe.

Mr. *Dunning* and Mr. *Widmore* now ſhewed Cauſe, on behalf of the Pariſh of *Wilsford* and *Lake*; and contended, that the Pauper did *not* gain any Settlement there. They argued, that this was a *Deſertion* of the Service. It does not appear that it was neceſſary for him to go Home; or that he could not return again; or that he was diſabled by this Kick, from being able to perform his Service, at leaſt in ſome Degree; or that the Maſter knew where he was. And nothing ſhall be preſumed, that it is not ſtated: It ſhall rather be preſumed, that the Seſſions have acted rightly. He could not have maintained an Action for the whole Year's Wages: For he did not ſerve it.

They mentioned the Caſe of *Chriſtchurch*, relating to Mr. *Lemonier's* Servant, and alſo the Caſe of *Iſlip*; and endeavoured to diſtinguiſh this Caſe from them. The former may be ſeen, *ante*, N° 158. pa. 494. and the latter is therein cited. In the former Caſe, they obſerved, that the Maſter knew of the Abſence, and aſſented to it: In the latter Caſe, there was an inhuman Refuſal of a reaſonable Requeſt.

Mr. Serjeant *Burland* and Mr. *Morris* urged, on behalf of the Pariſh of *Madington*, that the Pauper gained a Settlement by ſerving as is here ſtated. He was diſabled by a Kick from his Maſter's Horſe. The Maſter was obliged to take Care of Him *. The Pauper did not *deſert* his Maſter's Service: He went Home, only to be *cured*; which imports an *Animus redeundi*, when He ſhould be cured. He had a good Reaſon for going to his Friends: and it ſhall be preſumed, that the ſame Reaſon continued, and prevented his Return. The Maſter ought not to have deducted the ſix Shillings.

* *V. ante*, pa. 497.

In

In both the Caſes that have been mentioned, Settlements were gained: and there is no Difference between the Beginning, Middle, or End of the Year, in the Caſe of * Sickneſs.

* *V. ante*, pa. 497, 498.

LORD MANSFIELD was gone.

THE other THREE JUDGES were of Opinion, that the Servant gained a Settlement by the Service here ſtated: And they thought it to be within the Reaſon of the Determination of the *Iſlip* Caſe. Here, the Cauſe of his going home to his Friends clearly and fully appears to have been, to cure his Leg, which had been hurt in his Maſter's Service and by a Kick from his Maſter's Horſe. This was a reaſonable Cauſe of Abſence: It did not diſſolve the Contract, nor hinder his gaining a Settlement. The Abatement of Part of his Wages was unreaſonable: The Maſter ought not to have deducted any thing upon this Account. It was not like Running away or Deſertion of his Service. It is ſufficiently ſtated, that his going was grounded upon a reaſonable Cauſe, "to get cured of his Hurt." It is not indeed preciſely ſtated, that it was abſolutely neceſſary for Him to go Home to his Friends for this Purpoſe, or to continue with them ſo long as he did. But the Juſtices had the whole Evidence before them; and if it had been otherwiſe, they would probably have ſtated it. Here was no Fraud. We ſhould lean in favour of Settlements. Upon the Whole, it ſeems to be a ſufficient Excuſe, and within the Principle of the *Iſlip* Caſe.

ORDER of SESSIONS QUASHED:
ORIGINAL ORDER AFFIRMED.

V. poſt, N° 215. Rex. *v.* Inhabitants of *Roſs*.

Rex *v.* Inhabitants of St. Margaret's New Fiſh-ſtreet. N° 212.

TWO Juſtices removed *Ann Harris* and five other Children (ſpecifying their Names and ages) of *Richard Harris* deceaſed, by his late Wife *Elizabeth* alſo deceaſed, from *Clapham* in *Surrey* to *St Margaret's New Fiſh-ſtreet* in the City of *London*. The Seſſions, upon an Appeal, confirm the Order of the two Juſtices; ſtating the following Caſe— *Tueſday* 12th *Feb.* 1771.

That in or about the Year 1757, *John Small* Eſq; then and now reſiding and dwelling in his own Houſe at *Clapham* in the County

of *Surrey*, contracted with and employed the Pauper's Father, to *ſupply* Him the ſaid *John Small* with a Pair of Coach-Horſes for a Quarter of a Year for 22 *l.* 10 *s.* And the Pauper's Father contracted with the ſaid *John Small*, for *a Stable belonging to the ſaid John Small*; and was to *pay* 2 *l.* 10 *s. per* Quarter for it: And the ſaid *John Small* reſerved a ſeparate Stable, for his own Uſe.

That this Contract took Place at that Time; and was obſerved, performed, and PAID *quarterly*, for two Years and upwards, or thereabouts: About which Time, the ſaid *John Small* was going to diſcharge Him at the latter End of the Quarter; But on the Importunity of his Friends, agreed to let him ſerve Him further; For which he was to pay Him 20 *l.* a Quarter, only; and to have the like quarterly Allowance for the Uſe of his *Stables* as before. And under and in purſuance of the ſaid Contract, they mutually agreed and acted, 'till the Death of the Pauper's Father; which happened about the latter End of the Year 1769.

That during all this Time, the Pauper's Father rented and lived in a *Tenement* of 6 *l. per Annum*, in the ſaid Pariſh of *Clapham*; and was *never rated nor paid any Rate or Tax* for the ſaid Tenement or the Stable in which he put his Horſes as aforeſaid: But Mr. *Small was rated and paid for the Stable*, as Part of his own rateable Premiſes in *Clapham* aforeſaid. And there never was any other Contract and Dealings by and between Mr. *Small* and the Pauper's Father.

AND it appearing further in Evidence, that the Pauper's Father, in his Lifetime, in Converſation with two Perſons in that Neighbourhood concerning this Matter, told each of them "That he "had agreed with and ſerved Mr. *Small* with a pair of Horſes, "at the Rate of 100 *l. per* Year; and that he paid or allowed Mr. "*Small* for the Uſe of his Stable, to put and keep his Horſes in, "at the Rate of 10 *l. per Annum*."—

It is ordered by this Court [the Seſſions] on full Conſideration had thereon, That the ſaid Appeal of the ſaid Appellants be, and the ſame is hereby diſmiſſed; and that the Order or Warrant of the ſaid two Juſtices be, and the ſame is hereby ratified and confirmed.

Mr. *Lade* moved, on *Monday* 4th *February* 1771, to quaſh theſe Orders: For that the Father of the Paupers was legally ſettled at *Clapham*.

On *Monday* the 11th, Mr. *Dunning* ſhewed Cauſe; and argued, that this is *not* an *independent* Contract for renting the Stable; but only a Deduction from the Price of the Jobb-Horſes, upon account of their

their ſtanding in Mr. *Small*'s own Stable: No *Rent* would be payable after the Jobb-Contract ſhould be at an End.

Mr. *Lade* ſupported by Mr. *Wallace*, anſwered, that the firſt Contract was "for the Stable, to *pay* 2 *l.* 10 *s.* *per Quarter*: which was accordingly paid quarterly for two Years and upwards. And upon the ſecond Contract, it was to be, in like Manner, *quarterly*; and in fact ſubſiſted ſeveral Years, 'till *Harris*'s Death. Mr. *Lade* ſaid, the Seſſions took it up upon the Foot of its not being rateable.

It was adjourned till this Day: And now,

THE COURT made the Rule abſolute, for quaſhing the Orders. They thought the Contract, though aukwardly penned, was, in its Form, a ſeparate Contract for the Stable: and they founded their Judgment (as Mr. JUSTICE WILLES declared) upon the Particularity of the Contract; Obſerving, that though the Man was not rated for the Stable, yet he uſed ſix Pounds a Year beſides.

BOTH ORDERS QUASHED.

Eaſter Term

11 Geo. 3. 1771.

Rex *v.* Inhabitants of Honiton.

N° 213.

Tueſday 7th *May* 1771.

MR. Serjeant *Burland* had moved, on *Saturday* the 10th of *February* 1771, to quaſh an Order of Seſſions made for quaſhing an Original Order of two Juſtices, made for removing *Charles Deane* and *Ann* his Wife, *Joſeph Deane* his Son (aged 15 Years,) *Mary Deane* (aged ten Years,) and *Amelia Deane* (aged 5 Years) their Daughters, from the Pariſh of *Honiton* in the County of *Devon*, to the Pariſh of *Awliſcombe* in the ſaid County.

His Objection was, to the REASON given by the Seſſions for quaſhing the Original Order of the two Juſtices: Which was thus ſtated upon the Order of Seſſions—

" Upon an Appeal made to this Court by the Churchwardens and " Overſeers of the Poor of the Pariſh of *Awliſcombe* in this County, " from and againſt an Order lately made by *Thomas Putt* Eſq; and " *Richard Lewis* Clerk, two of his Majeſty's Juſtices of the Peace " of this County, whereby *Charles Deane* and *Ann* his Wife, *Jo-* " *ſeph Deane* his Son (aged 15 Years, *Mary* (aged 10 Years,) and " *Amelia Deane* (aged 5 Years,) their Daughters, were removed " from the Pariſh of *Honiton* in this County, to the ſaid Pariſh of " *Awliſcombe*, as the Place of their laſt legal Settlement; THIS " COURT, upon hearing all Parties concerned and their Counſel, " DOTH QUASH the ſaid ORDER, *for that* the Adjudication of the " ſaid Juſtices in the ſaid Order, is *only*, That the Paupers HAVE

" become chargeable. AND the ſame is hereby quaſhed accord-
" ingly."

THE COURT granted the Serjeant a

RULE *to ſhew Cauſe why the Order of Seſſions ſhould not be quaſhed, for the Inſufficiency thereof.*

Mr. *Mansfield* and Mr. *Hawtree* now ſhewed Cauſe. They ſaid, the Seſſions were obliged to *quaſh* this Order of the two Juſtices: It was not in their Power to amend it. They can only amend Matters of *Form:* But this is a Defect in *Subſtance.* To prove both theſe Aſſertions, they cited the Caſe of *Great Bedwin:* Which may be ſeen at large, *ante*, N° 58. pa. 163, to 165. They alledged, that the two Juſtices had not, in this their Order, intitled themſelves to any Juriſdiction. They have not ſhewn that theſe Paupers were likely to become chargeable to the Pariſh from whence they have removed them: They only declare that they *have* been ſo, in time paſt; but do not adjudge that they *are* ſo, or that they are *likely to become* ſo. But till they are likely to become chargeable, the Juſtices have no Juriſdiction. And it does not follow, that they are likely to be ſo hereafter, becauſe they were formerly ſo. To this Purpoſe, they cited 2 *Salk.* 491. *Suddlecomb* and *Burwaſh*, and 1 *Strange* 77. *Teelby* and *Wilberton* Pariſhes

Serjeant *Burland* and Mr. *Dunning* anſwered the Objection, by putting a different Interpretation upon the Expreſſion uſed by the two Juſtices. They underſtood it in the *preſent* Tenſe; and argued that the Import of theſe Words is much ſtronger than if the two Juſtices had only adjudged "that the Paupers were * *likely to be chargeable* to the Pariſh. For this is an Adjudication, "that they "*actually were* ſo, at the Time when the Order was made for re-"moving them."

* This is the Expreſſion uſed in 13 & 14 C. 2. c. 12. § 1.

THE WHOLE COURT were clear, that the Words "*have be-*"*come chargeable*" do here import the *preſent* Tenſe, and ought to be underſtood as an Adjudication of their being ſo at the *Time of making* the Order of Removal.

Mr. *Mansfield* then propoſed, that as the Seſſions had not gone into the Merits, they ſhould now do ſo. But,

LORD MANSFIELD anſwered Him, that it did not appear there were any Merits; and probably there were none: For, if there had really been any, the Pariſh of *Awliſcombe* would ſcarce have catched at a Straw, as they have done; but would have relied upon their

their Merits. Therefore his Lordſhip directed the Rule to be taken, and it was accordingly taken, that

The ORDER of SESSIONS be QUASHED; and
The ORIGINAL ORDER AFFIRMED.

N° 214.

Rex *v.* Inhabitants of Bray.

Friday 10th *May* 1771.

TWO Juſtices removed *John Hunt* and *Elizabeth* his Wife from the Pariſh of *Sherfield* upon *Loddon* in the County of *Southampton*, to *Bray* in the County of *Berks*: And the Seſſions, upon an Appeal, confirmed their Order; ſtating the underwritten Particulars, *viz.*

It appearing upon Oath, That on *Thurſday before Michaelmas* Day 1767, the Pauper *John Hunt* agreed with *John Lee*, of the ſame Pariſh of *Bray*, Farmer, as a Carter, "*to go into his Service on the* "MONDAY following, until *Michaelmas* 1768, for ſix Guineas"—

That at the Time of the Agreement, *John Lee* deſired Him "to "go into his Service *before Monday*"—

That *John Hunt* ſaid "It *would not ſuit Him*, as He was *then in* "*Service*:" and That *John Lee* replied, "*If* He would come into "his Service on the ſaid *Monday Morning*, He would SHIFT *till that* "*Time*"—

That He *went* into his Service on the MONDAY *accordingly*—

That *Michaelmas Day* was the SATURDAY next *after* the *Thurſday* on which He made the Agreement—

That at the Time of the Agreement, the Pauper was *in the Service of John Lewis of* SOUTH STOKE, under a Contract which *expired on Michaelmas Day* 1767: Which Service He LEFT *on the* NIGHT *of the Michaelmas Day* 1767—

That He CONTINUED in the Service of *John Lee*, till the *Day* BEFORE *Michaelmas Day* 1776: When *John Hunt deſired* LEAVE of the ſaid *John Lee* his Maſter; "*to go to* SEE HIS RELATIONS, "before He went to another Service"—

That his Maſter *deducted* ONE SHILLING from his Wages, *for that Day*; and paid him the Reſidue—

That He then *went away*, and *returned no more* into the Service of the ſaid *John Lee*— 2

That

That the ſaid *John Lee*, on the Pauper's going away, told Him, "that *if* He quitted the Service *before Michaelmas Day*, there *might* "*be a Diſpute* about his Settlement;" and *deſired Him* TO COME BACK—

This Court [the Seſſions] is of Opinion, and doth adjudge, "that "the ſaid recited Order ought to be confirmed:" And the ſame is hereby confirmed accordingly.

A Motion having been made, on behalf of the Pariſh of *Bray*, to quaſh theſe Orders; and a Rule thereupon obtained, to ſhew Cauſe why they ſhould not be quaſhed;

Mr. *Impey* and Mr. *Mansfield* ſhewed Cauſe, on *Tueſday* 27th *November* 1770; Alledging that this was a ſufficient Hiring and Service, to *gain* a Settlement in *Bray*.

Mr. *Dunning* and Mr. *Kerby*, on the Contrary, contended on behalf of *Bray*, that *no* Settlement was gained there; and that the Orders ought to be quaſhed. They inſiſted that there was neither a *Hiring for a Year*, nor a *Service for a Year*. First, The *Hiring* is incomplete: It is manifeſtly for *leſs* than a Year. The Contract did not commence, in point of Obligation, till the *Monday after Michaelmas Day:* That was the Commencement of the Term for which he was to ſerve; which Term was only *till* the next *Michaelmas*. Whereas there ought to be a *Hiring for a complete Year*. This is a Rule the Court will keep ſtrictly and preciſely to: They can't recede from it. The ſmalleſt Diminution prevents a Settlement. It is abſolutely neceſſary, that the *Original Contract* be for a *whole* Year. This is not an Original Contract for a Year, with leave of Abſence for the firſt Day or two: but 'tis a Contract to ſerve for a *leſs Space of Time*, than a Year. Under this Head, they cited the Caſes of *Coombe* and *Weſt-Woodhey*, and that of *Coltſbourn* and *South-Cerney:* The former is reported in 1 Sir *J. S.* 143; the latter, in Seſſions Caſes publiſhed in 1750, Vol. 1. pa. 174, Caſe 156. [and *v. ante*, pa. 158, 160, 434, 440, & 670. in N° 208] Secondly, The *Service* is alſo imperfect and inſufficient: The Quitting it before the End of the Year diſſolved the Contract, and is fatal to the Settlement. The Maſter plainly underſtood it to be ſo; and deſired Him to come back: but he would not.

Mr. *Impey* and Mr. *Mansfield* argued in Support of both the Hiring and the Service. They ſaid, a Day's Abſence, either at the Beginning or End of the Service, would not prevent a Settlement; eſpecially, if it be for a reaſonable Cauſe, or with Leave. And they

cited the *Goodneſton* Caſe, *ante*, N° 85. pa. 251. and that of *Iſſip*, in Sir *J. S.* 423, 424.

LORD MANSFIELD expreſſed Himſelf with much Concern at the Expences which Pariſhes are put to, in the Execution of the preſent Syſtem of the Poor Laws; and ſaid, it was beſt to keep to the Rules that have been laid down and ſettled in relation to them, without nicely entering into the Reaſons upon which they have been founded. One of thoſe Rules is, "that there muſt be a "*Hiring for* a Year." But here the Juſtices have not ſtated the *Fact* of any Hiring at all: They have only ſtated Evidence. The Court cannot draw Concluſions from the Evidence. If He was to draw the Concluſion from this Evidence, He ſaid He ſhould clearly think it a Hiring *for a Year*, with a *Diſpenſation* of the firſt Day. Why, elſe, ſhould the Maſter deſire Him to go into his Service *before Monday?* or ſay, "that he would ſhift till that Time?" It appears, that the Maſter underſtood it to be a Hiring for a Year. And this appears likewiſe from his deſiring the Pauper to come back, leſt his Settlement ſhould be diſputed, if he quitted the Service before *Michaelmas Day*. Neither had his Lordſhip any Doubt about the Leave for the *laſt* Day. The Pauper thought he had his Maſter's Leave. He allowed a Shilling for it: Which is more than * one Day's Wages.

* It is very near three.

MR. JUSTICE ASTON had no Doubt but that it was *meant* to be a Hiring for a Year: And ſo it appears, from all that the Maſter ſaid. But he concurred with Lord *Mansfield* in thinking the Caſe imperfectly and defectively ſtated. He thought it did not clearly ſtate the Time from whence the Service was to *commence*; And was of opinion, that it ought to go back to the Seſſions, for them to ſtate the *Fact* as to the *Hiring*.

IT WAS accordingly *ſent back* to the Seſſions to be † *re-ſtated*.

† *V. poſt*, N° 219.

WHEN it came before the Seſſions, (which was upon the 15th *January* 1 71,) The Majority of the Juſtices then and there preſent determined NOT *to hear any further Evidence*, or to RE-EXAMINE *the Pauper John Hunt*, although he attended to be examined as a Witneſs; and although *three* of the Juſtices then on the Bench were *not preſent at the former Seſſions*, and had *not heard any Evidence* on the ſaid Appeal. Five of the Juſtices preſent were Mr. *St. Andrew St. John*, Sir *Simeon Stuart*, Dr. *Durnford*, Mr. *Charles Powlet*, and Mr. *Swanton:* Of whom, Mr. *St. Andrew St. John*, Sir *Simeon Stuart*, and Mr. *Charles Powlet*, were *not preſent* at the *former* ſeſſions. The Counſel for the Appellants (the Pariſh of *Bray*)

contended, " that the Seſſions ought to hear Evidence, before they " re-ſtated the Caſe." Whereupon, the Queſtion was then put, by the Clerk of the Peace, to the Juſtices then on the Bench, " Whe- " ther they would hear any Evidence :" Which was determined in the *Negative*. Mr. *St. John* and Mr. *Powlet refuſed* to give *their Opinion* as to the Manner of re-ſtating the Caſe; becauſe they had *not heard the Evidence*. Yet, notwithſtanding ſuch their *Diſſent* and the *Refuſal to examine* the Pauper, the Seſſions *did re-ſtate* the Caſe, and did adjudge " that the Order made at the former Seſſions ſhould " be confirmed :" And the ſame was confirmed accordingly. Note, The only Difference between the former State of the Caſe, and this re-ſtated Caſe, was, an Addition in the latter, "that the Pauper was " hired *for a Year*."

Mr. *Kerby* hereupon moved, on *Monday* 22d *April* 1771, That the Caſe might be *again* ſent down to the Seſſions, to be a *ſecond Time re-ſtated*; becauſe ſeveral Juſtices who were upon the Bench at this ſecond Seſſions, but were not preſent at the firſt Seſſions, had *never heard the Evidence at all*, and muſt conſequently be incapable of re-ſtating the Caſe.

He cited two Caſes, which he ſaid were like the preſent. One of them was *Rex* v. *Page*, *Mich.* 1764, and *Hil.* 1765, where the Queſtion was " Whether a Man was Occupier of Tithes, or only " Bailiff:" The Seſſions were ordered to hear further Evidence; and did ſo. The other Caſe was *Rex v.* Inhabitants of *Hitcham*, *Hill.* 33 *G.* 2. where the Seſſions did re-examine the Fact, " Whe- " ther the Pauper was a ſingle or a married Man, when hired."

THE COURT were not ſatisfied that the Seſſions were obliged to hear Evidence over again; having heard it before. However, they gave Mr. *Kerby* a Rule upon the Proſecutor, to ſhew Cauſe " why the Orders returned with the *Certiorari*, and alſo the laſt " re-ſtated Order ſhould not be ſent back to the Seſſions, for them " to *hear Evidence*, and to *re-ſtate* the Caſe.

Mr. *Impey* and Mr. *Mansfield* now ſhewed Cauſe. They ſaid, the two Caſes cited were not like to the preſent Caſe. In both of them, it was *neceſſary* to hear the Evidence over again: In the preſent Caſe, it was *not* neceſſary. The Matter was fully examined into before; and the Seſſions had ſtated the Evidence, without drawing the Concluſion: The Court thought the Seſſions ought to have drawn the Concluſion; and ſent it back to them for that Purpoſe only. They have now done ſo: They have ſtated a Hiring for a Year. And this Court have now received all the Information they

wanted. The Majority of the Juſtices who conſtituted the latter Seſſions were preſent at the former: And the Pauper was then fully examined, and ſtrictly croſs-examined; and the Whole of the Evidence was ſtated: Nothing was wanting but the Concluſion; which it was not the Province of this Court, but of the Seſſions, to draw.

Mr. *Dunning* and Mr. *Kerby* anſwered, that it was ſent back to the Seſſions, in order to have the *Facts* aſcertained, which were before doubtful. The Pauper was preſent at this ſecond Seſſions; and might and ought to have been examined in order to clear up the Doubt: There was alſo another Witneſs, who attended, and might have been examined. It would then have appeared, that the Pauper was only hired from the *Monday after Michaelmas Day*, and conſequently *not* for a Year. This was in the Nature of a new Trial. The three Juſtices who had never heard the Examination, ought to have been permitted to hear it: Otherwiſe, the Opinion of the Majority ought not to bind them. Their Opinions and Reaſons might have altered the Opinion of the others. The Chairman Himſelf was One of thoſe who never heard the Examination: And without hearing it, they could not judge. In the two Caſes cited, the Juſtices re-examined the Matter, and heard further Evidence: And the Court approved of their Conduct.

Lord Mansfield—From the Affidavits that have been produced, it muſt be taken "that no other Witneſs was offered for "Examination at the ſecond Seſſions, but the Pauper." I had no Doubt, before, but that it was a Hiring for a Year; and I wonder any Body ſhould doubt it, upon the Facts *then* ſtated. But the firſt Order of Seſſions wanted *Form:* For the Seſſions had only ſtated the Evidence, without drawing the Concluſion. Both Maſter and Servant were clear, that at the End of the Year there was only an Abſence of *One* Day: And at the Beginning of the Year, the Pauper had his Maſter's *Leave* for being abſent the firſt Day. Both Maſter and Servant meant it as a Settlement.

"Whether the Juſtices at the ſecond Seſſions were or were not "obliged to hear *new Evidence*," is a Queſtion that muſt depend upon the *Nature of the Caſe*. In *Page*'s Caſe, new Evidence was *neceſſary:* But in the preſent Caſe, it was ſent back only to cure an *Informality*. Here, the Pauper had before given a full Account of the Agreement. Therefore the Juſtices at this ſecond Seſſions did very right, in not examining Him over again.

The other three Judges concurring,

Lord Mansfield ſaid,

Let the Rule be discharged.

It

It being now ſettled "that the Order of Seſſions (being thus cu-
" red of its Original Informality) ought to be affirmed;" (though I don't find in the Rule-Book, that it actually was ſo;)

Mr. *Dunning* moved, on behalf of the Pariſh of *Bray*, " that " their *Recognizance* might be *diſcharged:*" For that they had ſucceeded in their Objection to the Order of Seſſions, which was a bad One *till amended.* And he cited the before-mentioned Caſe of the Inhabitants of * *Hitcham*; where, upon the amended Order's being affirmed, the Recognizance was diſcharged.

* *V. ante*, No. 161. pa. 504.

Mr. *Impey* oppoſed this; and litigated it for ſome Time. But

LORD MANSFIELD declared, in the End, that as the Order of Seſſions had been varied, the Pariſh that had objected to it as it originally ſtood when it was returned up, ought not to be obliged to pay Coſts.

RECOGNIZANCE DISCHARGED.

The two Rules were theſe—

IT IS ORDERED that the Rule made on *Monday* next after three Weeks from *Eaſter*, " that the Proſecutor ſhould ſhew Cauſe why " the Order returned with the *Certiorari*, and alſo the laſt re-ſtated " Order returned hither by virtue of a Rule of this Court, ſhould " not be ſent back to the Seſſion, for the Juſtices there to hear the " Evidence again, and re-ſtate the Caſe," be now diſcharged.

On the Motion of Mr. *Impey*.

IT IS ORDERED that the Recognizance of the Defendants in this Cauſe be diſcharged.

On the Motion of Mr. *Dunning*.

Trinity

Trinity Term

11 Geo. 3. 1771.

No. 215. Rex *v.* Inhabitants of Roſs.

Tueſday 11th *June* 1771. TWO Juſtices removed *Thomas Cheſt* and *Elizabeth-Ann*, his Wife, from *Whitchurch* in *Herefordſhire* to *Roſs* in the ſame County: And the Seſſions upon an Appeal, confirm their Order; ſtating the following Caſe—

Thomas Cheſt, the Pauper, was *born in Roſs*; and, being unmarried, *hired himſelf for a Year* to *Edmund Miles*; and *ſerved Him, in Langarren*, only three Days. A Difference ariſing between them about the Buſineſs the Pauper was employed in, *Miles* (the Maſter) bid the Pauper go about his Buſineſs. On which the Pauper immediately *ran away, and quitted his Service*; and *hired himſelf to John Whitby for a Year*, at 55 *s.* a-year Wages, and *ſerved Whitby for ſix Months* in *Whitchurch*. *Miles* then inſiſted on *Whitby*'s not keeping the Pauper in his Service. *Whitby* paid the Pauper his Wages to that Time: and the Pauper *quitted that Service*, and went *one or two Voyages up the River Wye*, as *a Labourer to a Bargemaſter*, for a *Fortnight*; Then at *Whitby*'s Requeſt and *Miles*'s *Conſent*, RETURNED *into Whitby*'s *Service*, *without* coming to any new Agreement or any mention of Wages. He continued in *Whitby*'s Service in *Whitchurch ſeven Months*, being a Month over the End of the Year for which he was hired, in order to make out his loſt Time; and then received his Wages, his Maſter deducting 7 *s.* 6 *d.* for the Breaking of a Plough.

The Seſſions, being of Opinion "That the Contract for a Year "with *Whitby* was *diſſolved*, by mutual Conſent, at the Expiration "of the ſaid ſix Months" *confirm* the Order, with 10 *s.* Coſts of the

the Appeal, to be paid by the Churchwardens and Overſeers of *Roſs* to thoſe of *Whitchurch*.

Mr *Cocks* on *Monday* 13th *May* 1771 (the laſt Day of laſt *Eaſter Term*) moved for, and obtained a Rule to ſhew Cauſe why both theſe Orders ſhould not be quaſhed. He denied that the Pauper's Contract with *Whitby* was *diſſolved*.

Mr. *Kenyon* and Mr. *Poole* now ſhewed Cauſe. They inſiſted "that the Contract with *Whitby was diſſolved:*" and in proof of it, they cited the Caſe of *Caverſwall*; (which may be ſeen *ante*, *p.* 461. N° 147.) The Relation between them, as Maſter and Servant, was totally at an End. Their coming together again was caſual. It was *not* a "*continuing and abiding* in the ſame Service during the "Space of one whole Year;" which is required by 8 & 9 *W.* 3. *c.* 30. *ſ.* 4. In the Caſe of *Chriſtchurch* (*ante*, *p.* 69, & *p.* 71. N° 20.) *Lord Hardwicke* obſerved that this Act of 8 & 9 *W.* 3. was an explanatory and declaratory Law, with negative Words; and therefore ought not to be extended by Conſtruction: And in that Caſe, the Contract was holden to be determined by the Servant's quitting his Service within the Year; though he went away with his Maſter's Conſent, and received his whole Year's Wages.

Mr. *Cocks* and Mr. *Morton*, on the other Side, argued, that this may be conſidered as a Continuance in the ſame Service during the whole Year. Both Maſter and Servant underſtood it to be ſo: and *Whitchurch* Pariſh has had the Benefit of the Pauper's Labour for the Space of a whole Year; and therefore ought now to maintain Him. The Statute of 8 & 9 *W.* 3. has, as they ſaid, been liberally conſtrued. The Caſe of *Caverſwall* varies eſſentially, they ſaid, from the preſent Caſe. There the firſt Contract was completely diſſolved: But here, the Servant came again *under the old Contract*; and remained a Month over the End of his Year, to make up the loſt Time. They obſerved alſo, that here the Abſence was in the *Middle* of the Year, and was *purged* by the Maſter's receiving Him again: Whereas in that Caſe of *Caverſwall*, it was at the End of the Year. And to this Purpoſe they cited the Caſe of *Eaton* (*ante*, *p.* 47. N° 14.) where an Abſence of three Weeks without his Maſter's Conſent was purged by his Maſter's receiving him again: And it was there holden "that it would be inconvenient to be over-nice in Ser-"vices of this kind." But,

Lord Mansfield pronounced this Caſe to be, in his Opinion, a very clear One. Here is an *abſolute Diſſolution* of the Contract, by both Maſter and Servant, at the End of ſix Months: whereas

whereas the Statute requires a *Continuance* in the ſame Service for a whole Year. The new Service can't be connected with the old Hiring.

Mr. JUSTICE ASTON concurred with his Lordſhip, "that "this was an *abſolute Diſſolution* of the Contract; and that the new "Service can not be *connected* with the old Hiring." In this Caſe, the Maſter and the Servant had nothing more to do with each other, after the latter had quitted the Service of the former. It is not like the Caſes of ſmall Abſences and little Excurſions, which have been overlooked and not objected to by the Maſter. Thoſe Caſes proceed upon the Principle of the Contract's being *continued* and *not diſſolved:* Whereas in the preſent Caſe, it was *totally diſſolved.* The Caſe of *Caverſwall* and *Trentham* is very ſtrong to this Purport (*v. ante, p.* 463, 464, 465. N° 147. See alſo N° 87. *p.* 256 to 259.)

The Court diſcharged the Rule.

BOTH ORDERS AFFIRMED.

N° 216. Rex *v.* Inhabitants of Potter Heigham.

Wedneſday 19th *June* 1771.

TWO Juſtices removed *Charles Whenn* and *Rebecca* his Wife from *Ludham* in *Norfolk* to *Potter Heigham* in the ſame County: And their Order was, upon Appeal, confirmed by the Quarter-Seſſions; ſubject to the Opinion of this Court; upon the following Caſe—

It was duly proved to the Court of Seſſions, by the ſaid *Charles Whenn*, the Pauper, on his Oath, That after having gained a Settlement in the Pariſh of *Potter Heigham* by Hiring and Service for a Year, He was *hired for a Year* from *Michaelmas* 1764 to *Michaelmas* 1765, by *Samuel Thaxter* of *South Walſham* in the ſaid County. That ſuch laſt-mentioned Service he the ſaid Pauper entered upon, and continued therein until *the Day before the End* of the Year; when he *deſired his Maſter to diſcharge him*, telling him, "As he "had let Himſelf for the next Year to a Perſon in a diſtant Place, "and was removing further from his Friends, "He (the Pauper) "wiſhed to go and ſee them and paſs that day with them;" and

requeſted

requeſted to have that Time to Himſelf, to ſpend with them; and to which, the *Maſter conſented*; and He was *accordingly diſcharged*; and then received the whole of his Wages, *ſave Sixpence*, which he allowed to his Maſter *for that Day*. Afterwards, the ſaid *Charles Whenn* was hired for a Year to Mrs. *Nuthall* of *Caiſter* in the ſaid County, from *Michaelmas* 1765 to *Michaelmas* 1766, at the Wages of ſix Guineas; and entered upon his Service at *Michaelmas* 1765, and continued there until a few Days before *Lady Day* following. That he had then received One Guinea in part of his Wages; when, *without* his Miſtreſs's Leave, he *abſented Himſelf* from her Service *for about three Weeks*, and then returned and offered to ſerve out the Year with his ſaid Miſtreſs: But Mr. *Nuthall*, who acted as Agent for Mrs. *Nuthall*, as alſo Mrs. *Nuthall* Herſelf, *refuſed to take* the ſaid *Charles Whenn* again, unleſs he would make a *new* Agreement, and a *new* Hiring. And accordingly, it was agreed between them, "that he ſhould ſerve from that Time to the *Michaelmas* following; "and ſhould receive three Guineas and an half for that Service." He accordingly ſerved Her till *Michaelmas*, and received ſuch Wages of three Guineas and an half. It was likewiſe proved, that the ſaid *Charles Whenn* was hired for a Year from *Michaelmas* 1766 to *Michaelmas* 1767, by Mr. *Shreeve* of *Hardley* in the ſaid County of *Norfolk*. That he accordingly entered upon and continued in ſuch laſt-mentioned Service until *within three Days* of the End of the Year; when the Pauper, being unwilling to gain a Settlement in the ſaid Pariſh of *Hardley*, becauſe there was a Houſe of Induſtry in the Hundred in which *Hardley* is ſituate, and which with the Hundred adjoining were incorporated for the better Maintenance of the Poor in theſe two Hundreds, He the ſaid Pauper requeſted his Maſter, the ſaid Mr. *Shreeve*, to *diſcharge* Him the ſaid *Charles Whenn*; which he *accordingly did*, and they *parted by Conſent*, the Pauper abating one Shilling of his Wages for the three Days.

This Court [the Seſſions] upon due Conſideration had of the Premiſſes, adjudged "that the ſaid *Charles Whenn did gain* a legal "Settlement in the Pariſh of *Potter Heigham* aforeſaid, for Himſelf "and *Rebecca* his Wife; and did *not* gain any *ſubſequent* Settlement, "by ſuch Hiring and Service as aforeſaid;" and doth therefore order that the ſaid Order of Removal be, and the ſame is hereby accordingly ratified and confirmed.

Mr. *Wallace* now ſhewed Cauſe againſt quaſhing theſe Orders; Mr. *Dunning* having obtained a Rule for that Purpoſe: And the

Queſtion between them was "Whether the Pauper *Charles Whenn* "did or did not gain a Settlement in *South Waltham*, by the Ser- "vice to *Samuel Thaxter* here ſtated."

Mr. *Dunning* argued, that it was a *continuing* and *comp'ete* Service for a Year.

Mr. *Wallace* denied this; and argued "that it was totally *at an* "*End*, and the Contract *diſſolved*, before the Year was completed."

LORD MANSFIELD was not in Court.

The other three Judges (ASTON, WILLES, and ASHURST,) held it *not* to be a *Diſſolution* of the Contract; but an Abſence by Leave of the Maſter: And they made the Rule abſolute, for quaſhing the Orders.

BOTH ORDERS QUASHED.

See the laſt Caſe, N° 215. pa. 688, to 691; And alſo N° 14. N° 20. N° 78. N° 85. N° 115. N° 147. N° 158. & N° 211.

N° 217. Rex *v.* Inhabitants of St. George's Hanover Square.

Wedneſday 19th *June* 1771.

MR. *Bearcroft* had moved, on *Thurſday* the 13th of *June* 1771, to quaſh an Order of Seſſions, which vacated an Order of two Juſtices made for the Removal of *John Malcomb* from St. *George's Hanover Square* to St. *James's Weſtminſter*. But this Determination of the Seſſions was made ſubject to the Opinion of this Court, "Whether, upon the following Facts, the ſaid "*John Malcomb* gained a Settlement in the ſaid Pariſh of St. "*James*."

The ſaid *John Malcomb*, the Pauper, about twelve Years ago, hired of Mr. *John Reynolds* the *firſt and ſecond Floor unfurniſhed*, of a Houſe of the Value of forty Pounds a-year in the Pariſh of St. *James Weſtminſter*. The Pauper *furniſhed this Part* of the Houſe and held the ſame *entirely to Himſelf*, and inhabited therein ſeven Years, and paid for the ſame *ten Pounds a-year*, clear of all Deductions, to the Landlord *John Reynolds*, during all that Time. There was *only One Door* and *One Staircaſe*, which were *uſed in common* by the Pauper and the other Perſons who reſided in the Houſe.

Mr. *Bearcroft* ſaid, the Seſſions had miſtaken the Law, in ſuppoſing that the Pauper did *not* gain a Settlement in St. *James*'s: And he obtained a Rule to ſhew Cauſe why their Order ſhould not be quaſhed.

Mr. *Lucas* now moved (juſt before the Riſing of the Court, at near ten o'Clock at Night,) upon an Affidavit of Service, to make this Rule abſolute.

THE RULE *for quaſhing the Order of Seſſions was made abſolute*, without Defence.

Hilary Term

12 Geo. 3. 1772.

Nº 218. **Rex *v.* Inhabitants of Buckland Denham.**

Friday 24th *Jan.* 1770. TWO Juſtices removed *Joſeph Hibbard*, Clothworker, from *Buckland Denham* in *Somerſetſhire*, to *Mells* in the ſame County. The Seſſions, upon Appeal, diſcharge their Order.

The ſpecial Caſe, as appeared to the Court of Seſſions, (ſo the Order expreſsly ſtates,) and as agreed on by *Henry Hobhouſe* Eſq; Counſel for the Reſpondents, (though *not* agreed to by *Thomas Hot hkin* Eſq; Counſel for the Appellants,) is as follows—

The Pauper lived with his Father in *Mells* (where he was legally ſettled) until he was about 17 Years of Age; when his Father hired him to —— *Adams*, a Clothier of *Buckland Denham:* And an Agreement was made, in writing; and left with the Maſter.

The Maſter being ſerved with a Subpœna "to produce ſuch Writing," and being examined on Oath, ſaid "that he had ſearched "amongſt his Papers for it; but could not find it:" But, being a Payer to the Pariſh-Rates of *Buckland Denham*, he refuſed to give Evidence of the Contents of the ſaid Writing. On which, the Contents thereof were, by the Pauper's Father, proved to be, "that the "ſaid *Adams* ſhould teach the Pauper the Buſineſs of a *Shearman*; "and that the Pauper ſhould *ſerve* the ſaid *Adams* as a *Shearman*, "for five Years from thence next enſuing: for which, he was to "have, for the firſt half Year, the weekly Wages of 3 *s.* and to be "advanced Sixpence weekly Wages every ſucceeding half Year;

" and was to find Himſelf in Meat, Drink, Waſhing, and Lod-
" ging."

" The Pauper was to work *Shearman*'s *Hours* only: Which are
" uncertain."

The Pauper's Father declared, " that though he could not ſay whether it was or was not Part of the *Writing*, yet it was *underſtood*, " that the Pauper ſhould be at his *own Liberty* at *all other* " *Times*."

The Pauper ſerved his Maſter, *as a Shearman*, during the Term aforeſaid, according to the ſaid Agreement; working the ſame Hours as his Maſter's other Shearmen did; and hath not ſince acquired any other Settlement.

The Seſſions diſcharged the Order of the two Juſtices; with Liberty of making a ſpecial Caſe (to be agreed upon by the Counſel on each Side) for the Opinion of this Court.

Mr. *Hobhouſe* moved, upon *Thurſday* 14th *November* 1771, on behalf of the Pariſh of *Buckland Denham*, to quaſh this Order of Seſſions: For that the Pauper had *not* gained a Settlement there, by the Hiring and Service here ſtated.

Mr. *Dunning* now ſhewed Cauſe; and Mr. *Hotchkins* argued on the ſame Side, (*viz.* on behalf of the Pariſh of *Mells*, and in ſupport of the Order of Seſſions.) They diſputed the Regularity of its coming before this Court: And Mr. *Hotchkin* ſaid, that the Juſtices at the Seſſions conſidered it as a general Hiring; and did not mean to make a ſpecial Caſe of it. They have not ſtated theſe Particulars as * *Facts*; but only, that ſuch *Evidence* was. Here is no expreſs Exception of any particular Part of Time, when the Pauper was to be at his own Liberty: Nor does it appear with Preciſion, that there was any Part of it, when he could not be required to work. They cited the Caſe of St. *Agnes* (*ante*, N° 209. page 671;) and inſiſted, that the preſent Caſe falls within the Determination of it; and that the Seſſions have rightly determined " that the Pauper gained a Set-
" tlement in *Buckland Denham*."

* *V. ante*, No. 214. pa. 682 to 688.

Mr. Serjeant *Burland*, *contra*, on behalf of *Buckland Denham*, anſwered that the Seſſions have ſtated it as *a Fact*, " that the Pauper
" worked only the ſame Hours as his Maſter's other Shearmen did:" And the Agreement was, " that he ſhould be at his *own Liberty* at
" *all other* Times." The Caſe of St. *Agnes* and *Peranzabulo* was a Hiring *for a Year*, and *no Exception* in the Original Contract, of *Holidays* and *Sundays*. The Reaſon why a Settlement was gained in that Caſe was becauſe there was *no* Exception in the original Contract:

But

But here the Exception was in the Original Contract. And this is the Point upon which the Diſtinction turns. [*V. ante*, N° 209. pa. 671.]

THE COURT were of Opinion, "that the Seſſions have made "a *wrong* Determination." The Judges of this Court (of King's Bench) looked upon this ſpecial Caſe returned up to them by the Seſſions, as a State of the *Facts*; and therefore thought themſelves obliged to proceed upon the Facts ſtated.

LORD MANSFIELD—It is impoſſible to ſay what Evidence the Maſter *might* have given. The Seſſions proceeded upon the Evidence that *was* given: And ſo muſt we take it, as founded upon the Evidence actually given; without ſuppoſing any that might have been given, but was not given. This is *not* a good Hiring; becauſe there is an *Exception in it*, "that the Pauper was to work Shear- "man's Hours only, and to be at his *own Liberty* at *all other* "Times." But if the Contract be an *abſolute* Contract for a Year, the not working on *Sundays* or *Holidays*, if it be the Cuſtom of the Country "*not* to work on thoſe Days," ought not to hinder the Gaining of a Settlement; becauſe, otherwiſe, no ſuch Servant could gain a Settlement in thoſe Countries where ſuch a Cuſtom is eſtabliſhed.

Mr. JUSTICE ASTON ſpoke to the ſame Effect. He thought this Caſe not to be diſtinguiſhable from the Caſes of *Wrinton* and *Chewſtoke*, (which *vide ante* No. 98. pa. 280.) and *Macclesfield* and *Sutton*, (which *vide ante*, N° 146. pa. 258.) and he repeated what Mr. Juſtice *Deniſon* and Mr. Juſtice *Foſter* ſaid in the former Caſe, (which may be ſeen *ante*, pa. 282.) and particularly "that a "hired Servant is, even on *Sundays*, to be under the Government "and Control of his Maſter." The Diſtinction taken in the Caſe of St. *Agnes* was very nice, He ſaid; but very right. [See it, *ante*, pa. 673, at the End of that Caſe.] Where a Perſon is hired, and it is *Part of the Contract*, "that he ſhall be at his own Liberty "for Part of the Time," it is rather a Hiring within the Statute of Queen *Elizabeth*, than within that of King *William*. And in the Caſe now before us, the Wages are *weekly*: Which, though it does not ſtrictly make a Difference, yet it ſtrengthens the Caſe. There is no Inconvenience in keeping to the Diſtinction that has been laid down. A great Burthen might, otherwiſe, be brought upon Pariſhes, by Manufacturers hiring great Numbers of Workmen to work

work only at limited Hours, and have the Reſt of their Time at their own Diſpoſal.

Per Cur.

ORDER of SESSIONS QUASHED:
ORIGINAL ORDER AFFIRMED.

Rex *v.* Inhabitants of Cliſton upon Dunſmore.

No. 219.

TWO Juſtices removed *George Hammonds*, *Mary* his Wife, and their Son and Daughter, (ſpecifying their Names and Ages,) from *Lutterworth* in *Leiceſterſhire* to *Clifton* upon *Dunſmore* in *Warwickſhire:* And their Order was confirmed by the Seſſions upon an Appeal; ſubject to the Opinion of this Court, upon the Facts following, *viz.* *Wedneſa.* 12th *Feb.* 1772.

It was proved in Evidence, that the Pauper *George Hammonds* was born at *Clifton* upon *Dunſmore*; and, when about thirteen Years of Age, was bound Apprentice *by Indenture* ſtampt with a treble Sixpenny Stamp, dated 25th *April* 1753, to *William Wright* of *Swinford* in the County of *Leiceſter*, for ſeven Years. That the Conſideration-money in the Indenture (being ſeven Pounds) received by the Maſter, was mentioned in the ſaid Indenture to be paid by *John Bailey* of *Clifton* aforeſaid, Gentleman; being *Charity-money* left by *Catharine Bridgeman*, Widow: But the ſaid *Indenture was not ſtamped* with any *Stamp*, denoting Sixpence in the Pound to have been paid by the Maſter for every Pound of the ſaid ſeven Pounds; nor any *Evidence* given of any *Apprentice-duty being paid* for any Part thereof. That the ſaid Apprentice *ſerved about four Years at* Swinford, *under the ſaid Indenture.* That the ſaid *Catharine Bridgeman*, in her Lifetime, had a conſiderable Eſtate in the Pariſh of *Clifton*; and that the ſaid *John Bailey* was her Steward and Agent over her Affairs there; and was afterwards Steward to her Succeſſor in the Eſtate there. That it appeared only by the Evidence of the Attorney concerned in filling up the ſaid Indenture (and who was a ſubſcribing Witneſs thereto,) that two other poor Children of the Pariſh of *Clifton* were about the ſame Time put out Apprentices, and that he the ſaid Attorney made the Indentures for the Placing them out. That one of the two laſt-mentioned Indentures was produced; and there was a Receipt thereupon indorſed, ſigned by the Maſter, for

L. 10 received as Conſideration-money from the ſaid *John Bailey*, as Charity-money left by *Catharine Bridgeman*, Widow: But no Sum was mentioned in the Body of that Indenture as the Conſideration for taking the Apprentice bound thereby. That the ſaid *John Bailey* gave Order to the ſaid Attorney, for making the ſaid Indentures; and at the reſpective Times he ſo gave ſuch Orders, and alſo at the reſpective Times he paid the Conſideration-monies, declared "that the ſaid Monies were left by Mrs. *Chatharine Bridgeman*'s "Will, for putting out poor Children of the Pariſh of *Clifton* Ap- "prentices; and that he paid the ſame by order of her Executors; "and that the whole of the Money ſo left by her Will was *L.* 70 "or thereabouts; and that what remained after deducting the Mo- "nies paid with ſuch three Apprentices (which was about *L.* 27.) "was diſtributed amongſt the poor Families in the Pariſh of *Clif-* "*ton.*" But neither the Will of *Catharine Bridgeman*, nor the Probate, or any other Copy thereof, or any Clauſe therefrom, being produced upon the Trial of the Appeal; nor any Evidence given or offered touching the ſaid Charity-money, by any Perſon having ſeen the ſaid Will or any Copy thereof or of any Part thereof; or whether the ſaid *John Bailey*, who it appeared had left the neighbourhood of *Clifton* ſeveral Years paſt, was living or dead; or that any Application had been made to know whether he was or not, or for the producing Him (if living) to give Evidence touching the ſaid Charity; nor any other Evidence given concerning the ſaid ſeven Pounds (paid with the Pauper *George Hammonds* to the ſaid *William Wright*) being Charity-money, than the ſaid Indenture and that of the Attorney above ſtated, and of the ſaid *William Wright* declaring that he heard the ſaid *John Bailey* ſay, at the Time the ſaid Indenture was executed, "that the ſaid Sum of *L.* 7 was Charity-money "given by Mrs. *Bridgeman*;" the Court of [of Seſſions] conſidering it incumbent to be ſhewn on the Part of *Cliſton*, "that the ſaid *L* 7 "*was* SUCH *Charity-money* as was *exempt from paying the ſaid Ap-* "*prentice-duty*;" and not apprehending the Evidence above ſtated concerning the ſame, ſufficient to ſhew it exempted.

Theſe Orders being removed by *Certiorari*, and objected to, and a Rule made for ſhewing Cauſe againſt quaſhing them, and Cauſe ſhewn; a Rule was made on *Monday* next after three Weeks from *Eaſter*, on Mr. *Dunning*'s Motion, "that they ſhould be ſent back "to the Seſſions to be re-ſtated, and to ſtate the Facts particular- "ly."

The Seſſions return "That the Facts are, in the Judgment of "this Court [the Seſſions] *already* ſtated *as particularly* as the Evi- "dence

" dence given *upon the Hearing* of the Appeal will enable this Court " [the Seſſions] to ſtate them; and that *William Caldecott*, Solicitor " for the Pariſh of *Clifton*, produced and offered to prove in Evi- " dence, at this Seſſions, an Office-copy of Mrs. *Catharine Bridge-* " *man*'s Will to be a true Copy of the Original Will; and that this " Court refuſed to receive the ſame, apprehending this Court hath " not a Right *now* to *receive any further Evidence* reſpecting the ſaid " Appeal, than was given at the Time the ſaid Appeal was firſt " heard."

THE COURT [of King's Bench] being ſtill diſſatisfied with their Return, made a Rule, on *Thurſday* next after 15 Days from St. *Martin* (12 *G.* 3.) " that the Original Order and the Order of " Seſſions made in Confirmation thereof, be ſent back to the Seſ- " ſions; and that the Juſtices there do *hear freſh Evidence*, and " ſtate particularly, whether the Charity in queſtion be a *Public* or " a *Private* Charity."

Whereupon, at the General Quarter-Seſſions holden for the County of *Leiceſter* on *Tueſday* in the Week after the *Epiphany*, being the 14th of *January* 1772, That Court certified, That in obedience to the above-mentioned Rule they proceeded to hear *freſh Evidence* in this Cauſe: Which freſh Evidence was offered on behalf of the Inhabitants of *Clifton* and was as follows, *viz.*

Mr. *William Caldecott*, Attorney for the ſaid Inhabitants, produced an Office-copy of the Will of *Catharine Bridgeman*, and proved the ſame to be a true Copy of the ſaid Will, having examined it with the Original Will now remaining in the Regiſter's Office in *Doctors Commons*: By which Copy it appears that the ſaid Will contained the following Clauſes or Bequeſts, amongſt others—" *Item*, " To *Ludgate* Priſon, a hundred Pounds, to take Priſoners out, " for ſmall Debts. *Item*, To *Whitechapel* Priſon, thirty Pounds, " to take out Priſoners for ſmall Debts. *Item*, To the two *Comp-* " *ters*, twenty Pounds to each, to take Priſoners out. *Item*, To " *Clifton*, fifty Pounds, *to be given as my Brother thinks fit*; ſome " on't to put out Children Apprentices." And it alſo thereby appered, that the ſaid Legacies or Bequeſts, with ſeveral other " pe- " cuniary Legacies were by the ſaid Will charged on *real* Eſtate in " the following Manner—All thoſe Legacies deviſed, to be paid " out of *Clifton* Lands." And this Court further certifieth, That, from the ſaid freſh Evidence, this Court is of Opinion " that the " Charity in queſtion is a *Public* Charity." And this Court doth

further certify "That the ſaid *William Caldecott* further proved "that the ſaid *L.* 50 given to *Clifton* was not paid until about eight "Years after the ſaid Will was proved: and on that account there "was *L.* 70 paid inſtead of *L.* 50, as the ſaid Legacy to *Clifton*."

Mr. *Dunning* now moved, that, as the Seſſions have at length expreſsly returned "that the Charity in queſtion is a *Public* Charity," Both theſe Orders might be quaſhed: For that, by 8 *Ann. c.* 9. *ſect.* 40. Money given to put out Apprentices, either by Pariſhes or by or out of any Public Charities, is *not* to pay any *Duty*, or to require the Stamping of the Indenture. Conſequently, the Pauper gained a Settlement at *Swinford* by his Service there under this Indenture; though no Duty appeared to have been paid, or any Stamp upon the Indenture to denote it.

Mr. *Wallace*, *contra*, for the Pariſh of *Clifton*, argued that this *was not a public* Charity, but a *private* One; becauſe it was entirely left to the Choice of the Teſtatrix's Brother, "Whether to put out "Children Apprentices with the Money, *or not*." But

THE COURT (excluſive of Lord Mansfield, who was gone,) held it to be a *Public* Charity; and made the Rule abſolute for quaſhing the Orders.

BOTH ORDERS QUASHED.

V. ante, N° 185. pa. 576, 577. the 1ſt Point of that Caſe.

Eaſter

Eaſter Term

12 Geo. 3. 1772.

Rex *v.* Inhabitants of Nutley.

Nº 220.

MR. *Kerby* moved, on *Thurſday* 7th *May* 1772, to quaſh an Order of Seſſions, which quaſhed an Order of two Juſtices made for the Removal of *John Merrat* and *Elizabeth* his Wife and their four Children, (naming them, and ſpecifying their Ages,) from *Nutley* in the County of *Southampton* to *Bentworth* in the ſame County. *Saturday* 16th *May* 1772.

The Order of Seſſions ſtates—That the Appeal coming on, and being examined into, from the Teſtimony of Witneſſes and other Evidence; and argued and debated by Counſel on both Sides; and it appearing unto this Court, That *ſix Weeks before Michaelmas*, about 34 or 35 Years ago, *One John Page* was hired, in the Preſence of *Thomas Merratt* ſince deceaſed, (Father of *John Merratt* the Pauper, and which ſaid *John Merratt* is the Huſband of *Elizabeth* and Father of *John William Ann* and *Richard* mentioned in the ſaid Order of Removal,) by *Thomas Smith* of the Pariſh of *Bentworth*, to ſerve for a Year the ſaid *Thomas Smith*, as UNDER-Carter *to the ſaid Thomas Merratt*; when it was agreed, "that the ſaid *John Page* "and *Thomas Merratt* ſhould come into the Service of the ſaid *Tho-* "*mas Smith* on the *Day after Michaelmas* Day then next." That the ſaid *Page* and *Thomas Merratt* did *accordingly go into the Service* of the ſaid *Thomas Smith*, on the *Day after Michaelmas* Day; and that the ſaid *John Page* ſerved the ſaid *Thomas Smith during the Year*, as UNDER-Carter *to the ſaid Thomas Merratt*; and that *then* the ſaid

Page and *Thomas Merratt left* the Service of the ſaid *Smith*; and He, *Page*, received his Year's Wages. That *John Merratt* the Pauper, never gained any Settlement in his *own* Right. That *Rachel Merratt*, "the Widow of the ſaid *Thomas Merratt* depoſed, "that her late "Husband, the *Michaelmas* Day in the Morning after the ſaid "*Thomas Merratt* left the Service of the ſaid *Thomas Smith* of the "Pariſh of *Bentworth*, *told Her* He *had hired Himſelf* to Farmer "*John Smith* in the Pariſh of *Ilsfield*; and had likewiſe *told Her* "that He *went into* the Service of the ſaid *John Smith* in the Pariſh "of *Ilsfield*, at the *Michaelmas*, in conſequence of ſuch Hiring; and "that he *continued* in his Service *till about a Month before the* Mi-"chaelmas *following*; at which Time, to wit, about a Month be-"fore the *Michaelmas* Day, the ſaid *Smith turned Him going*; and "that he alſo *told Her*, that he was ſo turned away *becauſe* he ſhould "not gain a Settlement in the Pariſh of *Ilsfield*; but *did not* tell Her "that the ſaid *John did* GIVE *that or any other Reaſon* for turning "Him away." And the ſaid *Rachel* further depoſed that the ſaid *Tho-*"*mas Merratt* frequently *told* Her He was *turned away againſt his* "*Will*." And the ſaid *Rachel* further depoſed "that ſhe was married "to the ſaid *Thomas Merratt* at *Eaſter* in the Year in which the ſaid "*Thomas Merratt told* Her He was in the Service of the ſaid *John*; "and that She *twice ſaw* Him, during the ſaid Year, in the Service "of the ſaid *John*; and during that Year, till his being turned away, "*conſidered* in the Service of the ſaid *John*." That ſo much of the ſaid *Rachel Merratt*'s Evidence as related to the Declarations of her Husband's Evidence being conſidered by the Court as mere Hearſay, was *rejected*, as *not* being admiſſible in Evidence.

THIS COURT [the Seſſions] is of Opinion and doth adjudge "that "the ſaid recited Order ought to be quaſhed:" And the ſame is hereby quaſhed accordingly.

N. B. The Pariſh of *Nutley* inſiſted, at the Seſſions, "That "*Thomas Merratt*'s Settlement was in *Bentworth*," upon the Facts given in Evidence by *John Page*. It was agreed, "that *Thomas* "*Smith* (the Maſter of *Thomas Merratt* and *John Page*) was then "dead."

The Pariſh of *Bentworth* inſiſted, at the Seſſions, and the Seſ-ſions were of Opinion (with them) "that *John Page* had not proved "a HIRING of *Thomas Merratt* for a Year." And moreover, they likewiſe ſet up the ſubſequent Hiring and Service of *Thomas Merratt* to Farmer *John Smith* of *Ilsfield*, as a good legal Settlement gained in *Ilsfield* ſubſequently to his Service in *Bentworth*: Which rendered it immaterial,

immaterial, they ſaid, whether the Hiring in their Pariſh of *Bentworth* was ſufficiently proved, or not.

In anſwer to this ſubſequent Settlement in *Ilsfield*, the Pariſh of *Nutley* inſiſted, "that it was only ſupported by HEARSAY-*Evi*-"*dence*; *viz.* what *Rachel Merratt*'s Husband had *told* Her." And the Seſſions being of Opinion with them, upon *this* Point, rejected the Evidence of *Rachel*.

Mr. *Kerby*, who was of Counſel for the Pariſh of *Nutley*, grounded his Motion for quaſhing this Order of Seſſions, upon the two Poſitions abovementioned to have been inſiſted upon by them at Seſſions; namely, 1ſt. That *John Page*'s Evidence (*Thomas Merratt* and *Thomas Smith* being Both dead) was ſufficient Evidence of *Thomas Merrat*'s having been hired *for a Year* in *Bentworth*; or, at leaſt, of a * *general* Hiring: And 2dly, That *Rachel Merrat*'s *Hearſay*-Evidence was inſufficient to prove a ſubſequent Settlement in *Ilsfield*; For, an Account of what Perſons deceaſed have declared in their Lifetime, ſhall not be received of any *particular Facts*, (though it may, in ſome Caſes, be admitted in proof of general Cuſtoms, or Matters of Common Tradition or Repute;) and *Rachel Merratt*'s Evidence tends only to prove *particular Facts*. [*V. Theory of Evidence*, 111, 112. and *Mr. Juſtice* Blackſtone's *Commentaries on the Laws of* England, vol. 3. pa. 368.]

* *V. ante*, No. 107, pa. 300.

Mr. *Impey* and Mr. *Mansfield* now ſhewed Cauſe, on Behalf of the Pariſh of *Bentworth*, why the Order of *Seſſions* ſhould not be quaſhed. They ſaid that the Seſſions were of Opinion "that there was no "Proof of a proper Hiring in *Bentworth*; and conſequently, no Set-"tlement gained in *that* Pariſh." Whereupon the Counſel for the Pariſh of *Nutley* deſired that the Caſe might be ſtated ſpecially, in order to have the Opinion of this Court. After which, the Counſel for *Nutley* ſet up a ſubſequent Settlement which the Pauper had, as they alledged, gained in *Ilsfield:* And they went into Evidence to prove this ſubſequent Settlement in *Ilsfield*. But the Seſſions rejected the *Hearſay*-Evidence of *Rachel Merratt*; holding it to be in-admiſſible. However they ſtated *this* Evidence, as well as the *former* Evidence given to prove Him ſettled in *Bentworth*.

So that it turns upon two Queſtions; 1ſt, "Whether *Thomas* "*Merratt* deceaſed gained a Settlement in *Bentworth*;" 2dly, "Whether the Seſſions did right, in rejecting the Evidence of his "Widow, relating to a ſubſequent Settlement in *Ilsfield*."

They argued, that if the Seſſions are right in their Opinion "that "there

" there was not a ſufficient Proof of a proper Hiring in *Bentworth*," there can be no Doubt but that their Order muſt be confirmed. And if they have done wrong in rejecting *Rachel Merratt*'s Hearſay-Evidence relating to the ſubſequent Settlement in *Ilsfield*, their Order ought not to be *quaſhed*: It ought only to be *ſent back* to the Seſſions.

As to the firſt Queſtion—It don't appear upon the Evidence, nor is it ſtated, " that *Thomas Merratt* was ever *actually hired* to *Thomas* " *Smith* of *Bentworth*:" There is not the leaſt Proof of any *Contract* between them. Therefore there is no Proof of any Hiring in *Bentworth*. And ſo was the Opinion of the Seſſions: And their Judgment muſt ſtand, unleſs it appears to be wrong.

As to the ſecond Queſtion—Though the Evidence of *Rachel Merratt* ought to have been admitted, yet the Rejection of it is no Reaſon for *quaſhing* the Order of Seſſions: It can only be a Reaſon for ſending it down again, to be re-ſtated. Undoubtedly, many Hearſay-Evidences have been received; and rightly: The Seſſions ought to examine every Thing to the Bottom; They always receive the Evidence of the Pauper's Family. And if this Evidence of *Rachel Merratt* had been received, it would have proved a ſubſequent Settlement gained in *Ilsfield* under a legal Hiring and Service for a Year: And it would have proved that his Maſter's turning Him away, againſt his Will, before the End of his Year, in order to prevent his gaining a Settlement there, was fraudulent; and, conſequently, could not hinder or prevent Him from gaining it. So that it would, upon the whole of it, have proved a Settlement in *Ilsfield*, ſubſequent to the Service in *Bentworth*. They cited the Caſe of the Inhabitants of *Greenwich* (which may be ſeen *ante*, pa. 343. N° 82.) where, in a Caſe very like to the preſent, it was referred to the Juſtices to ſtate the Facts more fully *.

* But *N. B.* That was conſented to by Sir *J. S.*

Mr. *Dunning* and Mr. *Kerby*, *contra*, on Behalf of *Nutley*, ſtated the Queſtion thus—1ſt, Whether this *Thomas Merratt* deceaſed was *ever* ſettled in *Bentworth*: 2dly, If he was, then How he *loſt* that Settlement.

1ſt, The Tranſaction was near 40 Years ago. The Evidence to prove a Settlement in *Bentworth* is ſtated; And the Seſſions have drawn a Concluſion from it: But their Concluſion is a *wrong* one. Their Concluſion is, " that He was *not* hired:" It ought to have been " that he *was* hired." And this Court will correct their Miſtakes. *Page* could not be *Under*-Carter to *Thomas Merratt*, unleſs

Thomas Merratt was *Head*-Carter: The Offices are reciprocal. Expreſſing the one implies the other. It appears, therefore, that *Thomas Merratt* was once ſettled in *Bentworth*. 2dly, How then has he loſt his Settlement? "He has loſt it," ſay the Counſel for *Bentley*, "by gaining a new one in *Ilsfield*." But He did *not*, in Truth and Reality, gain any Settlement there: And ſo the Seſſions have determined. And they have determined right; though they have indeed given an unwiſe Reaſon for their right Determination. *If* the Hearſay-Evidence had been admitted, inſtead of being rejected, it would have been clear that the Man did not ſerve his Year out, or any Thing near it: And there is no Pretence to ſuppoſe that he was turned away by his Maſter, for the *Reaſon* which this Woman has *fancied*. It is not pretended that the Maſter *gave* any ſuch Reaſon for turning Him away: It is all mere Imagination.

LORD MANSFIELD held the Settlement in *Bentworth* to be ſufficiently proved: There is Evidence enough, both of a Hiring for a Year, and of a Service for a Year. Beſides, The Court ſhould lean, he ſaid, *in favour* of Settlements.

Mr. JUSTICE ASTON likewiſe held the Settlement to be in *Bentworth*. He thought the Hiring for a Year in that Pariſh to be ſufficiently proved; and, conſequently, that the Seſſions had done wrong, in determining "that a Hiring for a Year was *not* pro-"ved."

He alſo thought them in the wrong, for rejecting the Evidence of *Rachel Merratt*: For the Widow's Account of her Family ought to have been received.

But he was of Opinion, that *if* it had been received, it would not have amounted to a Proof "that the Turning the Man away a "Month before the End of the Year was *fraudulent*." Conſequently, it muſt have appeared, upon the whole Evidence given by this Man's Widow, "that he had *not* gained a ſubſequent Settlement "in *Ilsfield*.

THE COURT therefore made Mr. *Kerby*'s Rule abſolute, for quaſhing the Seſſions Order, and affirming that of the two Juſtices for the Removal of the Paupers to *Bentworth*.

ORDER of SESSIONS QUASHED:
ORIGINAL ORDER AFFIRMED.

Hilary

Trinity Term

12 Geo. 3. 1772.

N° 221. Rex *v.* Inhabitants of Charles.

Saturday 4th *July* 1772.

TWO Juſtices removed *John Hodge* from the Pariſh of *Knowſtone* in the County of *Devon* to the Pariſh of *Charles* in the ſame County: And the Seſſions confirmed their Order; ſtating the following Facts—

The Pauper *John Hodge* was bound by the Pariſh of *Knowſtone* to *John Fiſher*, for an Eſtate which he rented in that Pariſh, of *John Looſemore*; who covenanted with ſaid *Fiſher*, "that if a ſecond Ap-"prentice was bound to Him for that Eſtate" (which ſecond Apprentice the ſaid *John Hodge* was,) "He the ſaid *John Looſemore* and his "Repreſentatives would diſcharge the ſaid *John Fiſher* from any Ex-"pence that he might incur thereby." The ſaid *John Hodge* being bound to the ſaid *John Fiſher*, He the ſaid *Fiſher* applied to the Widow and Repreſentative of ſaid *Looſemore*; who took the Pauper, and received the Pariſh-money with Him; and went with the Pauper into the Pariſh of *Roſeaſh*, where She then lived, and where He continued with Her about two or three Years; when the ſaid Mrs. *Looſemore* intermarried with *John Slader* of the Pariſh of *Charles*; and there the Apprentice reſided with Her for about three Years; when the Boy became a *Cripple*, by loſing both his Feet: Whereupon, ſaid *Slader* and his Wife, about two Months before the Apprenticeſhip was diſcharged, ſent the Apprentice to ſaid *Fiſher*, his Original Maſter (who knew of his being a Cripple,) and inſiſted on his *receiving* the Pauper; which *Fiſher* refuſed, until She promiſed to pay Him all the Expence he ſhould be at in taking Care of the

Pauper; And then *Fiſher* put the Pauper to live with the *Pauper's Grandmother*, in the ſaid Pariſh of *Knowſtone*, at 18 *d. per* Week; where he reſided *ſeven Weeks*; when he was removed, having been firſt diſcharged by the Court of General Quarter Seſſions from his Apprenticeſhip, *after a Reſidence of more than* FORTY DAYS of the ſaid ſeven Weeks; for which, *Fiſher* paid Her accordingly, and alſo two Shillings for dreſſing his Wounds; Of which, he hath ſince received 10 *s.* 6 *d.* of *Slader*. and been promiſed the Remainder.

THIS COURT [the Quarter Seſſions] being of Opinion "that the "Pauper did *not* gain a Settlement by ſuch Reſidence of ſeven "Weeks in the Pariſh of *Knowſtone*," doth therefore confirm the ſaid Order, *&c.*

Mr. *Hawtrey* moved, on *Friday* 15th *May* 1772, to quaſh both theſe Orders: For that the Pauper gained a Settlement in the Pariſh of *Charles*, by his laſt forty Days Reſidence there.

Serjeant *Glynn* and Mr. *Heath* now ſhewed Cauſe. Mr. *Heath* argued, that *Fiſher's* Application to Mrs. *Looſemore* "to take the Ap-"prentice," and her Taking Him, operated as an *Aſſignment* of the Apprentice; And that the firſt Maſter was thereby *diſcharged* of Him. But their main Argument was, that this is not *ſuch* a Reſidence of the Apprentice in *Knowſtone* as could gain Him a *Settlement* there: It was only a caſual, accidental, temporary Reſidence; and like reſiding in an Hoſpital, for Cure. They cited, to this Purpoſe, the Caſe of *Alton* and *Elvetham*, *ante*, pa. 418. N° 134. and reaſoned from what Lord *Mansfield* ſaid in that Caſe; (which ſee, *ante*, pa. 421. to 424.) They inſiſted, that *actual* Service was neceſſary, in order to an Apprentice's gaining a Settlement. And therefore this Apprentice's legal Settlement was in *Charles*, where he *performed the Service* of his Apprenticeſhip during the Space of three Years; and *not* in *Knowſtone*, where he lay ill, as a Cripple, and was totally *incapable* of performing any Service at all. In *this* Caſe, it appears, negatively, that he *neither did* nor *could* perform any Service in *Knowſtone*. He was received by *Fiſher as being incapable of ſerving* Him; and was accordingly maintained upon *Charity* only, in *Charles*, without any Regard or Relation to the Contract of Apprenticeſhip, which he was altogether incapable of performing, and was ſoon after diſcharged from. Therefore the Caſe is juſt the ſame as if he had never returned to his Maſter at all.

Mr. *Hawtrey*, *contra*, on behalf of the Pariſh of *Charles*, obſerved, as to the 1ſt Objection, that here was *no Aſſignment:* It was only a

Performance of Mr. *Looſemore*'s *Covenant*, by his Widow and Repreſentative. And as to the 2d Point, The Apprentice gained a Settlement in *Knowſtone* by reſiding there the laſt forty Days. The Act of 3 & 4 *W. & M. c.* 11. § 8. ſays only "that if any Perſon "ſhall be bound an Apprentice by Indenture, and *inhabit* in any "Town or Pariſh:" It ſays Nothing about *Service* or *performing* any thing. Beſides, might not the Maſter *diſpenſe* with the Performance of Service? The Caſes about Caſual Reſidence don't apply to this Caſe. Here, the Maſter was obliged to receive the Apprentice again: And *Knowſtone* was the Pariſh where the Original Binding was.

LORD MANSFIELD being gone,

Mr. JUSTICE ASTON ſtopped Serjeant *Burland*, who was beginning to ſpeak on the ſame Side with Mr. *Hawtrey*; It being a clear Caſe, he ſaid, in favour of the Pariſh of *Charles*.

The Boy was bound to *Fiſher* in *Knowſtone*; And the Original Indenture continued: It was never diſcharged by any thing that is here ſtated to have paſſed between *Fiſher* and Mr. *Looſemore*, the Widow and Repreſentative of *John Looſemore* who had covenanted to diſcharge *Fiſher* from the Expence that he might incur by having a ſecond Apprentice bound to Him for the Eſtate in *Knowſtone* which he rented of *Looſemore*.

The Boy reſided about three Years in the Pariſh of *Charles*; then became a Cripple; was ſent back to *Fiſher* at *Knowſtone*; received by Him; and put, by Him, to live with his Grandmother in *Knowſtone*; and reſided there above forty Days. The *Performance of actual Service* is not the Thing material: It is the *Reſidence*, the * *Inhabitancy* of an Apprentice, in a Town or Pariſh for forty Days, that gains the Settlement. And this Reſidence here ſtated can not be deemed a caſual accidental Reſidence; and therefore is not to be compared to the Caſes under that Head. I know, it has been ſaid "that the *Benefit the Pariſh has received* from the Labour of the "Pauper is the Reaſon of gaining a Settlement in it." But that is not the true Reaſon: It is the *Reſidence* or *Inhabitancy* for the laſt forty Days, that gains the Settlement.

The other Two Judges concurred.

BOTH ORDERS QUASHED.

* *V.* 3 & 4 *W. & M. c.* 11. *ſect.* 8. and 31 *G.* 2. *c.* 11. *ſect.* 1.

ORDERS

ORDERS of REMOVAL.

CONTINUATION of SETTLEMENT-CASES, by Four additional Years ending in *July* 1772, 12 *G.* 3. completing a Series of very near 40 Years.

Note—The laſt Caſe already printed (in the 2d Volume in quarto) is numbered 191; and was determined on 16th *June* 1768, *Tr.* 8 *G.* 3.

NO Settlement is gained by *paying* Pariſh-taxes, unleſs *rated.* 629. *V. ante*, No. 21. 29. 30. 148. No. 192.

An Infant *Pariſh Apprentice* was regularly bound to a Widow, a Farmer; who, after ſix Years quitted the Farm to her Son *Stephen Cuttle*, and left the Apprentice there with Him. After ſeveral Years, he applied to his Maſter "to leave the Service:" Who told him "He might go where he pleaſed:" And in 1766, *Stephen Cuttle* gave up his Indentures to him. In *February* 1767, He hired himſelf at *Notton*, and ſerved at *Notton* above forty Days, *viz.* till *Auguſt* 1767. He attained his Age of 24 in *May* 1767. This is *not* a Service in *Notton* UNDER *the Indenture of Apprenticeſhip:* Nor was it ſufficient to gain a Settlement there. 631. *V. ante*, No. 91. 95. 174. 186. No. 193.

The Pauper *built a Cottage* upon a *Waſte*, without Leave; was *not rated, nor paid any Taxes*; but continued Nineteen Years and an half in poſſeſſion; and *about twenty Years* ago, was turned out of Poſſeſſion by his Mortgagee: And *after twenty Years*, Both joined in the Sale of it. He gained a Settlement. The Court conſidered the Poſſeſſion of the Mortgagee as his Poſſeſſion; and thought his Poſ- No. 194.

ſeſſion to be, upon the Whole, upwards of *twenty* Years. 632. *V. ante*, No. 124.

No. 195. The Pauper ſucceeded to his Father who had lived 30 Years in a Cottage built on the Waſte: And the Pauper, his eldeſt Son, continued in it about 35 Years, till his Removal from it. The Order for his Removal from it, which had been confirmed by the Seſſions, was quaſhed, together with the Order of Seſſions: No Defence was made. 633. *V. ante*, No. 194.

No. 196. The Houſe occupied by Mr. *Amor* being in Turn to furniſh a Tythingman for the Pariſh of *Patney*, the Leet-Jury preſented Him to that Office: And He, by Leave of the Court-Leet, put in his Place *Thomas Palmer*, a Common Labourer, a Houſekeeper living in the ſame Pariſh; Who was *ſworn in* accordingly, *at the ſaid Leet*; and *ſerved* the ſaid Office for a Year; But Mr. *Amor* paid him all his *Expences* attending the Execution of it. *Palmer* gained *no* Settlement in *Patney*: For, clearly, He ſerved *for Amor*; and did *not* execute the Office *for Himſelf* and on his *own* account, within the Meaning of 3 & 4 *W. & M. c.* 11. § 6. 639. *V. ante*, No. 167.

No. 197. If a grown up Son has a derivative Settlement as Part of his Father's Family; and the Father removes to another Pariſh and gains a Settlement there, but the *Son does not remove* with Him; the Son does not gain a Settlement in this laſt Pariſh, in virtue of his *Father*'s gaining One there. 639.

No. 198. *Saul Biſhop* was bound Apprentice to *William Kearly* of *All Saints*, for four Years; and ſerved Him there, three Years. It was then agreed between them two and one *Samuel Dagnell* reſiding in *Rumſey* *under a* CERTIFICATE from St. *Giles* in *Reading*, "that *Biſhop* "ſhould work with *Dagnell* the Remainder of his Apprenticeſhip: "for which, *Kearly* was to receive two Shillings *per* Week." *Biſhop* accordingly ſerved Him, and reſided with Him, in *Rumſey*. He gained *no* Settlement in *Rumſey*: For, though the Intention of 12 *Ann. c.* 18. *ſect.* 2. is, "that a *Certificate-Perſon* ſhall not be the *In*-"*ſtrument* of burthening the SAME Pariſh to which he comes with "a Certificate;" the Reaſon does not hold againſt his being an Inſtrument of the Apprentice's gaining a Settlement in a *third* Pariſh." 641. 642.

The

The improper Method of collecting the *Poor-tax* at *Sheerneſs*, particularly ſtated. The *Dock-yard Men* do not gain a Settlement there, in virtue of their Contribution to the Cheſt, by the Stoppage of 6 *d. per* Quarter out of their Pay. 648. No. 199.

A Son living with his Mother, as Part of her Family, was *charged as Occupier* (in a Church Rate and a Poors Rate) of Lands really *occupied by his Mother*, and *not by Him*; and *paid* ſuch Aſſeſſments: He thereby *gains* a Settlement. 650. No. 200.

A *Certificate* ſpecifying the certificated Female to be *unmarried and with Child*, and acknowledging Her and the Child or Children She *now goeth with* to be legally ſettled with them, and promiſing to provide for them, ſhall *bind* the Pariſh giving ſuch Certificate. 653. *V. ſuprà*, No. 66. No. 90. No. 201.

Samuel Bolton a Plumber and Glazier, *let Himſelf* to *John Maſon* of *Dedham*, Plumber and Glazier, at the Wages of *ſix Shillings a-week*, Board, *Lodging*, and Waſhing, *Summer and Winter*. He ſerved under that Agreement, eleven Months: When his Maſter informed Him "that he muſt lodge out of his Houſe." Upon which, the Pauper demanded Sixpence a-week more; alledging "that He "would *otherwiſe quit* the Service." He received it for three Months. The Pauper *apprehended* He was bound to ſtay with his Maſter a Year. But, by the Court, unanimouſly, He was *not* bound to do ſo: Nor did he gain a Settlement in *Dedham*. 654. *V. ante*, No. 98. and No. 165. No. 202.

1ſt, There muſt be a *Hiring for a Year*; either in *Law*, or in expreſs *Words*. Ibid.

2d, There muſt be a *reciprocal Obligation* upon both the contracting Parties. *Ibid. V. poſt*, No. 206.

3d, This was *not* ſuch a Hiring for a Year as is requiſite to gain a Settlement. *Ibid. V. poſt*, No. 206.

The Pauper, *Abraham Lewis*, when a *Boy*, together with his Father, entered into an *Agreement* in Writing, *not ſtampt*, with a Cooper's Widow, of *All Saints*, reciting that "whereas the Boy, "with the Conſent of his Father, *is to be bound Apprentice* to Her "for ſeven years," She agrees to pay the Boy, 25 *s.* the firſt Year; 50 *s.* a-year, for the next four; 3 *l.* the ſixth, and 4 *l.* the ſeventh. He ſerved her two Years, and received the ſtipulated Money: But No. 203.

NO *Indentures* of Apprenticeſhip were *executed.* The Boy gained *no* Settlement in *All Saints*; either as an *Apprentice*, or as a *hired Servant.* 658. *V. ante*, No. 173.

No. 204. Two Juſtices (Mr. *Middleton* and Mr. *Jones*) made an Order of Removal, in *May* 1768, from *Llanrhydd* to *Ruthin*; and the Paupers were ſent hither. *Ruthin gave Notice of an Appeal.* Whereupon, before it was filed, *Llanrhydd* CONSENTED *to take the Paupers back*, without giving *Ruthin* the Trouble of appealing. Afterwards, in *January* 1769, two Juſtices (Mr. *Yale* and Mr. *Price*) removed the ſame Paupers from *Llanrhydd* to *Denbigh:* And, upon Appeal, their Settlement was proved to be at *Denbigh*; but it appeared that the former Order made by Mr. *Middleton* and Mr. *Jones* for removing them to *Ruthin* had NOT *been* APPEALED *againſt.* 660.

1ſt, Though, in general, an Order of Removal not *appealed from*, is *concluſive* upon the *non-appealing* Pariſh, as againſt all the World; yet in this particular Caſe, where the firſt Order was *abandoned* and the Paupers *taken back again* by *Llanrhydd*, *Ruthin* was *not concluded*, but the Order to remove them to *Denbigh* was a good one. *Ibid.*

2d, Though the *County* be not in the *Body*, but *only in the Margin*; yet, if there be a *clear and plain Reference* to it, 'tis ſufficient in an *Order:* Not ſo, in an Indictment. *Ibidem.* *V. ante*, No. 12. No. 45. and No. 69. accord.

No. 205. The Pariſh of *Merevall* lies in *two Counties.* The Pauper was removed to that Part of it which lies in *Leiceſterſhire*, and for *which Part* there is *no proper Overſeer*; but was delivered to the Perſon who was properly appointed Overſeer for the other Part, and was alſo *Churchwarden* of the Pariſh; which Officer has *uſually acted* in the Maintenance of the Poor, throughout the *whole* Pariſh. This is a good Removal: The Churchwarden is a ſufficient Officer in *this* Reſpect; He was an Overſeer to *this* Purpoſe. 662.

No. 206. The Pauper agreed to live with *Samuel Ruddall* of *Crediton* by the *Week*, at two Shillings and Sixpence *per Week*; and *to part, at a Fortnight's or Month's Notice:* He lived with *Ruddall* eight Years, under this Agreement. He gained *no* Settlement by this Service. In order to gain a Settlement under a *Hiring for a Year*, there muſt be an *Obligation to ſerve for a Year:* Here, the Pauper was *not obliged*

obliged to ſerve a Year. 663. *V. ante*, No. 98. No. 165. No 202.

Kirkby Stephen is a *large Pariſh* conſiſting of ten different *Town-ſhips*, who maintain their *reſpective Poor*, and have *ſeparate Overſeers:* The *Townſhip* of *Kirkby Stephen*, and the *Townſhip* of *Wharton* are two of theſe ten Townſhips. The Paupers were removed from *Newport*, by an Original Order directed to the Officers of the *Pariſh* of *Kirkby Stephen*, and adjudging their Settlement to be in that *Pariſh*, and removing them to that *Pariſh*; and were brought, together with this Order, by the Overſeers of *Newport*, to the Overſeer of the TOWNSHIP of *Kirkby Stephen*, and the Order delivered to Him; Who ſaid "that the Paupers did not belong to *Kirkby Stephen*, but "to *Wharton:*" But *neither* the Pariſh of *Kirkby Stephen*, nor the Townſhip of *Kirkby Stephen appealed* from the Order; and the Paupers remained in *Kirkby Stephen*, and were maintained by a near Relation in the Townſhip of *Kirkby Stephen*, for near a Year and an Half; when, that Relation dying, they aſked Relief of the TOWNSHIP of *Kirkby Stephen*, who thereupon got them removed to the *Townſhip* of *Wharton*. The laſt Order is a bad One: For, the *Townſhip* of *Kirkby Stephen* is, by *not appealing* from the former Order, precluded from diſputing the Settlement of the Paupers, not only with any other *Pariſh*, but even with *another* TOWNSHIP in the *ſame Pariſh*. 669. *V. ante*, No. 2 4. No. 207.

A Hiring "to ſerve for a Year *from Whitſuntide to the Whitſuntide* "*following*," is a *ſufficient Hiring*, for gaining a Settlement; It being ſtated to be *uſual* in that County (*Durham*) to hire Servants from *Whitſuntide to Whitſuntide*; and ſuch Hiring and Service *always deemed a Year*'s Service, and the Wages always paid accordingly, without regard to ſuch Space conſiſting of *leſs* or more than 365 Days. 671. *V. ante*, No. 55. *poſt*. No. 210. No. 208.

The Father of the Pauper *contracted* with One Mr. *N.* (the Pauper being then 15 or 16 Years of Age,) for the Pauper to work at Mr. *N.*'s *Stamps* (Tyn-Mills) FOR ONE YEAR, at the yearly Rent of *L.* 5. And the Pauper *ſerved* Mr. *N.* at his ſaid Stamps, for the ſaid Year, by working therein daily, *except Holidays and Sundays*, according to the *Cuſtom of Tinners*. But he eat, drank, and lodged with his *Father*, in the ſame Pariſh. He *gained* a Settlement. No. 209.

Here is *no Exception* in the *Original Contract*. The Diſtinction turns upon its being *Part of the Original Contract*, or not. 673. *V. ante*, No. 52. pa. 152. No. 141. pa. 439. and No. 146. pa. 459. and *poſt*, No. 218.

No. 210. A HIRING *for two ſucceſſive* HALF-*Years*; and Service (in purſuance thereof) for a *whole* Year, with the ſame Perſon, and in the ſame Place, gains *no* Settlement. There muſt be a *Hiring for a Year*. Cuſtom and Practice can't ſupply the Want of it. 675. *V. ante*, No. 55. No. 165. No. 208. No. 209.

No. 211. A Carter hired for a Year from the following *Michaelmas*, entered into his Service about *three Days after Michaelmas*; and continued till about *three Weeks before* the next *Michaelmas*; when, having been *kicked by One of his Maſter's Horſes*, he went *Home to his Friends*, without his *Maſter's Knowledge* or asking his *Leave*, to CURE HIS LEG; and continued there during the Remainder of the Year, and *never returned* to his Maſter, except for his Wages, and after *Michaelmas*. He conſented to his Maſter's deducting Six Shillings on account of his Abſence. He *gained* a Settlement, by this Service. 677. *V. ante*, No. 158. and *poſt*, No. 215.

No. 212. The Pauper contracted with Mr. *Small* of *Clapham* (whom he had agreed to ſupply with a Pair of Coach-horſes for a Quarter of a Year,) for a *Stable belonging to Mr. Small*; and was to *pay L.* 2, 10 *s. per Quarter* for it; and it was *paid quarterly*, for upwards of two Years; And on a new Contract for the Horſes, the like Quarterly Allowance to Mr. *Small* for the Uſe of his Stables was agreed, received, and acted upon till the Pauper's Death; who alſo rented a Tenement of Six Pounds *per Annum* in the ſame Pariſh. But the Pauper *never was rated or paid* any Rate or Tax for the Tenement or Stable: Mr. *Small* was rated and paid for the *Stable*. The Pauper *gained* a Settlement in *Clapham*. 679.

No. 213. An Adjudication (in an Original Order of Removal) "that the "Paupers *have* become chargeable," imports the *preſent* Tenſe, and is to be underſtood "that they were ſo at the *Time of making* "the Order." 681.

On

On *Thurſday* before *Michaelmas Day* 1767, (which *Michaelmas Day* was the following *Saturday*,) the Pauper agreed with a Farmer of *Bray*, "to go into his Service on the *Monday* following, *until Michaelmas* 1768, for ſix Guineas." The Maſter deſired Him to go into his Service *before Monday*. The Pauper ſaid, "it would not ſuit Him." The Maſter ſaid, "If he would come into his Service *on the ſaid Monday Morning*, he would *ſhift* till *that* Time." The Pauper went into his Service on the MONDAY, accordingly; and *continued* in it till the Day *before Michaelmas* 1768; when he deſired *Leave* of his Maſter to go to ſee his Relations, before he went into another Service. His Maſter *deducted One Shilling* from his Wages for that Day. The Pauper went away, and *returned no more*. The Maſter told Him, that "*if* he quitted the Service *before Michaelmas Day*, there *might be a Diſpute* about his Settlement;" and *deſired Him to come back*. The Seſſions confirm the Order made for removing the Pauper to *Bray*. 684. 685. 686. No. 214.

1ſt, This was holden not to be ſtating a *Fact* of any Hiring; but only *Evidence*; and therefore it was ſent down to the Seſſions to be *re-ſtated* as to the *Fact* of the Hiring. 684. *V. poſt*, No. 219.

2d, They re-ſtated, "that it *is* a Hiring *for a Year*." 684. And they were right: It is ſo. 686.

3d, The Seſſions was *not* obliged to *re-examine* the Pauper, or hear *new Evidence*; though three of the Juſtices preſent at the ſecond Seſſions were *not preſent at the former*. 686. For *this Queſtion* muſt depend upon the *Nature of the Caſe*: And here, it was ſent back, only to cure an *Informality*. Ibid.

4th, The *Recognizance was diſcharged*; becauſe the Order of Seſſions had been *varied*. 687. *V. ante*, No. 161.

Thomas Cheſt hired Himſelf to *John Whitby*, for a Year; and *ſerved* Him *ſix Months*. Being then warned, by a former Maſter of *Cheſt*'s, "not to keep *Cheſt* in his Service," *Whitby* paid Him his *Wages to that Time*; and *Cheſt* QUITTED *his Service*, and went Voyages as Labourer to a Bargeman, for a Fortnight. He then RETURNED *into Whitby*'s *Service*, without coming to any new Agreement; and continued in it *ſeven* Months.—He gained no Settlement: For, the Contract for a Year was *abſolutely diſſolved*; and the new Service can not be connected with it. 689. 690. *V. ante*, No. No. 215.

14. No. 20. No. 78. No. 85. No. 115. No. 147. No. 158. No. 211. No. 216.

No. 216. A Servant hired for a Year continued till the *Day before the End of his Year*; when he deſired his Maſter to *diſcharge* him; telling his Maſter, "as he had let Himſelf for the next Year to a Perſon in "a diſtant Place, he wiſhed to paſs that Day with his Friends;" and *requeſted to have that Time to Himſelf*, to ſpend with them: To which the *Maſter conſented*; and he was *accordingly diſcharged*; and then received the whole of his Wages, *ſave Sixpence*, which he allowed to his Maſter for that Day.—This was holden *not* to be a *Diſſolution* of the Contract, but an Abſence by *Leave* of the Maſter. He *gained* a Settlement. 692. *V. ante*, Nor 215. and the Numbers there referred to.

No. 217. The Seſſions having determined "that Hiring PART *of a Houſe* "of the Value of 40 *l.* a-year (*viz* the firſt and ſecond Floor, un-"furniſhed,) and holding it entirely to Himſelf, and paying 10 *l.* "a-year clear of all Deductions for it; the Houſe having *only one* "*Door* and *one Staircaſe*, which were *uſed in Common* with Others "reſiding in the Houſe; did *not* gain a Settlement;" their Order was *quaſhed:* But it was *without Defence*. 693.

No. 218. The Pauper, at about 17 Years of Age, was hired, by his Father, to a Clothier of *Buckland Denham*, to ſerve Him as a *Shearman* for five Years; and was to *work Shearmens Hours only*, (which are uncertain:) It was underſtood, "that he ſhould be *at his own Liberty* "at *all other* Times." The Maſter was to teach Him the Buſineſs of a Shearman. He was to have, for the firſt half-year, the *weekly* Wages of 3 Shillings; and to be advanced Sixpence *weekly* Wages, every ſucceeding Half-year; and was to find Himſelf in Meat Drink Waſhing and Lodging. He ſerved his Maſter, *as a Shearman*, during the ſaid Term according to the ſaid Agreement; *working the ſame Hours* as his Maſter's *other Shearmen did*—He did *not* gain a Settlement in *Buckland Denham*, by this Hiring and Service. 690. *V. ante*, No 209. and the Numbers there referred to.

No. 219. The Pauper ſerved under an *Indenture not ſtampt* for the *Apprentice-Duty*; nor was any Evidence given "that any had been paid." 1ſt, It was ſent back, to be re-ſtated, and to ſtate the Facts particularly

particularly; and afterwards sent down again, for the Sessions to *hear fresh Evidence*, and state particularly "Whether the Charity in question was a *public* or a private Charity." *V. ante*, No. 214.

2dly, Money left by Will, to a Parish, "to be given *as my "Brother thinks fit*: SOME *on't to put out Children Apprentices*"—is a *public* Charity; and within 8 *Ann. c.* 9. *sect.* 40. "700. *V. ante*, No. 185.

No. 220. 1st, A *Hiring for a Year* and Service for a Year is *sufficiently proved* by the following Evidence, (after the Death of both Master and Servant.) *John Page* was hired, in the presence of *Thomas Merratt* deceased, by *Thomas Smith* of *Bentworth*, to serve *Smith* for a Year, as UNDER-*Carter* to said *Thomas Merratt*; when it was agreed "that "said *Page* and *Merratt* should come into the Service of said *Smith* "on the *Day after Michaelmas Day* then next." They did so. *Page* served *Smith* during the Year, as UNDER-*Carter to the said Thomas Merratt:* And then *Page* and *Merratt* left the Service of the said *Smith*; and *Page* received his Year's Wages. 701.

2d, The Evidence of the *Widow* of this *Thomas Merratt* (Father of the Paupers, and upon whose Settlement theirs depends,) of what her deceased Husband *told* Her, concerning his gaining a subsequent Settlement, is admissible Evidence. 705.

3d, The Court ought to lean, *in favour* of Settlements. 705.

No. 221. *John Hodge* was bound *Apprentice* by the Parish of *Knowstone*, to *John Fisher* of *Knowstone*, for an Estate which *Fisher* rented of *John Loosemore*; who had *covenanted* with *Fisher* "to discharge him "from any Expence that he might incur thereby." On *Fisher*'s Application, Mr. *Loosemore*'s Widow and Representative (he being then dead) took the Boy; received the Parish-money with Him; carried Him Home with Her; and afterwards removed to the Parish of *Charles*, where the Boy resided with Her about three Years, and then became a *Cripple* by losing both his Feet. She thereupon returned Him to *Fisher*; who received him, upon her Promise "to "pay him all the Expence he should be at in taking Care of Him;" and put Him to live with his (the Boy's) Grandmother in *Knowstone*, at eighteen Pence *per* Week; where he *resided above forty Days*, and then was discharged of his Apprenticeship, by the Quarter-Sessions. His Settlement in in *Knowstone*. 707.

1st, The *Original Indenture continued:* It was *not discharged*

by the Tranſaction between *Fiſher* and Mrs. *Looſemore*. Ibid.

2d, It is the *Reſidence* or *Inhabitancy* for forty Days in any Town or Pariſh, that gains an Apprentice a Settlement in it: The *actual Performance of Service* is *not* the material Thing; nor is the *Benefit which the Pariſh receives from the Labour* of a Pauper the *true Reaſon* of gaining a Settlement. *Ibid.*

A TABLE

A TABLE of the PRINCIPAL MATTERS contained in this Volume.

Settlements gained by

Renting—

A Jobb-Coachman uſed the Gentleman's own Stables. It was looked upon to be a *Separate Contract* (as it was penned) for the Stables. N° 212.

Hiring *Part of a Houſe* entirely to Himſelf, paying ten Pounds a Year clear, gains a Settlement; Though it has only *one Door* and *one Staircaſe*, uſed *in Common* with others reſiding in it. N° 217.

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Except Holidays and *Sundays*, according to the Cuſtom; *if* ſuch Exception be *not* Part of the Original Contract: Otherwiſe, if the Exception be Part of the Original Contract. (See Settlements gained by Hiring.) N° 209.

wanting three Weeks at the *End* of his Year, without his Maſter's Knowledge or Leave, or ever returning: but it was to *get his Leg cured*, which had been *kicked by his Maſter's Horſe*. N° 211.

wanting One Day at the *Beginning*, and *One Day* at the *End*. N° 214.

wanting a Day at the *End*, was conſidered as an Abſence by *Leave*, and not as a Diſſolution. N° 216. (See Settlements not gained by Service. N° 215.)

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A Son *charged as Occupier* and *paying*; though his *Mother* (with whom he lived) was the *Real Occupier*. N° 200.

Settlements *not* gained by

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The like, for 35 Years. N° 195.

Executing

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Hiring

There muſt be a Hiring *for a Year*; either expreſsly, or in Law. N° 202. and N° 206. and N° 210.

And a *reciprocal Obligation*. N° 202.
whereas they here came to a new Agreement, on the Servant's threatening to quit the Service. *Ibid.*

To ſerve as *Shearman*, for five Years; to *work Shearman's Hours only*, and to be *at his own Liberty* at *all other* Times; to have *weekly* Wages: This is *not* a good Hiring; becauſe the Exception is *Part of the Contract*. N° 218. (See Title "Settlements gained by Hiring. N° 209.")

To ſerve as UNDER-*Carter* to *T. M.* proves *T. M.* to have been hired as Upper-Carter. N° 220.

A *Grown*

Settlements *not* gained by

Parentage—

A *Grown Son, not removing* with his Father to another Pariſh, gains no Settlement in ſuch other Pariſh. N° 197.

Service—

A *Return* into Service, *after the Contract is diſſolved*, can't be connected with the old Contract. N° 215. But a Diſcharge, for a reaſonable Cauſe, a *Day* before the End of the Year, ſhall not be too rigidly conſtrued to be a Diſſolution of the Contract, but a *Leave* of Abſence. N° 216.

Sheerneſs Dock-yard-Men—

in virtue of their *Contribution to the Cheſt*, N° 199.

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paying them; if not *rated alſo*. N° 192.

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